(25,820)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 990.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, PLAINTIFF IN ERROR,

vs.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY, ARKANSAS, CLAUDE THOMPSON, AS SHERIFF, AND MARSHALL STROZIER, AS TREASURER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print
Citation and service	1	1
Writ of error	2	1
Petition for mandamus	4	3
Exhibit A—Original judgment, entered January 26, 1891..	8	6
B—Judgment of revivor, June 9, 1900.....	10	8
C—Judgment of revivor, &c., January 18, 1910....	11	9
Demurrer to petition	14	10
Motion to require plaintiff to enter satisfaction of judgment..	15	10
Answer to motion to satisfy judgment	16	11
Hearing and submission	18	12
Order overruling demurrer to petition and allowing defendant to answer	19	12
Answer to petition filed	20	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 26, 1917.

	Original.	Print
Answer to petition for mandamus	21	13
Exhibit A—Petition in Circuit Court of U. S. for Western District of Arkansas	26	17
B—Answer in Circuit Court, &c.	28	18
C—Judge's charge to jury in Circuit Court	29	19
Order allowing plaintiff time in which to plead	32	20
Motion to strike out paragraph of answer	33	21
Demurrer to answer	34	21
Judgment, allowance of writ of error, &c.	36	22
Bill of exceptions	38	23
Complaint in original cause	39	24
Answer in original cause	41	26
Instructions in original cause	42	27
Answer withdrawn in June, 1900	44	28
Judge's certificate	45	30
Petition for writ of error	47	30
Assignment of errors	48	31
Bond on writ of error	50	32
Clerk's certificate	52	33

1 United States of America to Greenwood District of Sebastian County, Arkansas, Claude Thompson as Sheriff and Marshall Strozier as Treasurer, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the City of Washington, D. C., Thirty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the Western District of Arkansas, wherein Missouri & Arkansas Lumber & Mining Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Frank A. Youmans, Judge of the District Court of the United States for the Western District of Arkansas, this 20th day of January, in the year of our Lord one thousand nine hundred and Seventeen.

FRANK A. YOUMANS,
Judge United States District Court for the Western District of Arkansas.

Receipt of copy of the above citation is acknowledged & service thereof waived this Jan'y 20th, 1917.

THOS. B. PRYOR, *Attorney.*

[Endorsed:] No. 617. Law. United States District Court, Western District of Arkansas. Missouri & Arkansas Lumber & Mining Company, vs. Greenwood District of Sebastian County, Arkansas, et al. Citation. Filed January 20, 1917. Wm. S. Wellshear, Clerk.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western District of Arkansas, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the June Term, 1916, thereof, between Missouri & Arkansas Lumber & Mining Company, plaintiff, and Greenwood District of Sebastian County, Arkansas, Claude Thompson as Sheriff and Marshall Strozier as Treasurer, No. 617 Law, a manifest error hath happened, to the great damage of the said Missouri & Arkansas Lumber & Mining Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the said records and proceedings aforesaid at the City of Washington, D. C., and filed in the office of the Clerk of the United States Supreme Court on or before the 31st day of January, 1917, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Frank A. Youmans, Judge of the District Court of the United States for the Western District of Arkansas, this 1st day of January, in the year of our Lord one thousand nine hundred and seventeen.

Issued at office in the City of Fort Smith, Arkansas, with the seal of the District Court of the United States for the Western District of Arkansas, and dated as aforesaid.

[Seal of the District Court, Western District of Arkansas, U. S. A.]

WM. S. WELLSHEAR,
Clerk District Court United States,
Western District of Arkansas.

Allowed by
FRANK A. YOUMANS, *Judge.*

Return to Writ.

UNITED STATES OF AMERICA,
Western District of Arkansas, ss:

In obedience to the command of the within Writ, I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said United States District Court, for the Western District of Arkansas, at office in the City of Fort Smith, Arkansas, this 24th day of January A. D., 1917.

[Seal of the District Court, Western District of Arkansas, U. S. A.]

[SEAL.] WM. S. WELLSHEAR,
Clerk District Court of the United States,
Western District of Arkansas.

[Endorsed:] No. 617. Law. United States District Court, Western District of Arkansas, Fort Smith Division. Missouri & Arkansas Lumber & Mining Company vs. Greenwood District of Se-

bastian County, Arkansas, et al. Writ of Error. To the District Court of the United States for the Western District of Arkansas. Filed 1st day of January, 1917. Wm. S. Wellshear, Clerk.

3 District Court of the United States, Western District of Arkansas, Fort Smith Division.

No. 617. Law.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY, ARKANSAS; CLAUDE THOMPSON, as Sheriff, and Marshall Strozier, as Treasurer, Defendants.

Record of proceedings in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, in the above entitled cause, which was begun in said United States District Court on the 23rd day of May, 1916, and proceeded to final judgment in said court January 1, 1917; and in the progress whereof pleadings were filed and proceedings had as follows, namely:

4 *Petition for Mandamus.*

(Filed in U. S. District Court May 23, 1916.)

In the United States District Court, Western District of Arkansas, Fort Smith Division.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

To the Honorable F. A. Youmans, Judge:

Your petitioner, Missouri & Arkansas Lumber & Mining Company would respectfully state and show:

That it is an incorporated company by and under the laws of the State of Illinois and a citizen of said State.

That on January 26, 1891, said corporation, in a suit in which it was plaintiff in the United States Circuit Court for the Western District of Arkansas, Fort Smith Division, obtained a judgment against the County of Sebastian in said State for the sum of $13,703.29 and costs of suit which judgment was rendered and entered of record in the following language:

"It is considered by the court that the plaintiff, the Missouri & Arkansas Lumber & Mining Company do have and recover of and

from the defendant, Sebastian County, Greenwood District, the sum of Thirteen Thousand, seven hundred three and twenty nine one hundredths ($13,703.29) Dollars with interest at the rate of six per cent per annum from this date until paid together with all its costs in and about this case laid out and expended."

A copy of which judgment is herewith filed, marked "Exhibit A" as a part of this complaint.

That thereafter, at the June Term of said United States Circuit Court, to-wit: on June 9, 1900, on a petition filed to revive said judgment upon which service was duly had upon the defendant, the defendant appeared by James M. Spradling, Attorney and filed its demurrer and answer thereto, and thereafter withdrew the same and judgment was entered in the following words:

"And it appearing to the court that on the 26th day of January, 1891, the plaintiff recovered in this court a judgment against the defendant, Sebastian County, Arkansas, Greenwood District for the sum of Thirteen Thousand seven hundred three and twenty nine one hundredths ($13,703.29) Dollars with interest at the rate of six per cent per annum from that date until paid together with all its costs in and about said case laid out and expended, and it further appearing that no part of said judgment has been paid except the sum of $576.00 on the 7th of August, 1896 and the sum of $1,176.00 on the 29th day of May, 1897 and the sum of $849.96 on the 23rd of July, 1897 and that said judgment is wholly unsatisfied with the exception of said payments, and which judgment appears on the common law record book No. 1 of this court at page- 461 and 462, and it appearing that the defendant has been duly served with process in this action and no cause being shown to the contrary, it is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid and satisfied as hereinbefore stated, be and the same is hereby revived."

A copy of which judgment is herewith filed marked "Exhibit B" and made a part of this complaint.

That thereafter on the 18th day of January, 1910, in said court after the filing of a petition to revive said judgment, upon which service was duly had upon the defendant for more than twenty days before the commencement of the January Term of said court, the defendant, failing to appear, the following judgment was made and entered by said court, to-wit:

"And it appearing to the court that on the 26th day of January, 1891, the plaintiff recovered judgment in this court against the defendant Sebastian County, Arkansas, Greenwood District for the sum of Thirteen Thousand, seven hundred three and twenty nine one hundredths ($13,703.29) Dollars with interest at the rate of six per cent per annum from that date until paid, together with all costs in and about said cause laid out and expended."

And the said judgment reciting the revivor of said judgment on the 19th of June, and reciting further "and the further sums which have been paid since said judgment was revived, to-wit:

6	July 9, 1903	$2,000.00
	April 28, 1904	1,000.00
July 19, 1904		1,000.00
March 6, 1905		500.00
September 19, 1906		500.00
July 5, 1907		500.00
April 6, 1909		1,000.00

And it appearing that said judgment is wholly unsatisfied with the exception of said payments, which judgment appears on the common law record Book No. 1 of this court, pages 461 and 462, and which judgment of revivor appears on the Common Law Record of this court at Book 5 page No. 414.

And it appearing that the defendant has been duly and legally served with process, and no cause being shown to the contrary, it is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid as hereinbefore stated, be and the same is hereby revived and renewed."

A copy of which judgment of revivor is herewith filed marked "Exhibit C" and asked to be taken as a part of this complaint.

Petitioner alleges that since said last revivor, there has been paid upon said judgment, the following sums, to-wit:

On April 13, 1909	$1,000.00
On July 10, 1914	1,000.00
On August 25, 1914	1,000.00

Petitioner alleges that the total amount of payments made upon said judgment aggregate $— which is the face amount of said judgment counting interest at the rate of six per cent from the rendition of the same on the 26th day of January, 1891 until the passage of the Act of the legislature forbidding the payment of interest upon judgments, of March 21st, 1893.

Plaintiff alleges that the act of the legislature of March 21, 1893 forbidding the payment of interest on judgments already rendered in the United States Court, which judgments were for interest at the rate of six per cent per annum, is unconstitutional and void, and deprives the plaintiff of his property without due process of law contrary to Article 2, Sec. 8 Sec. 17 & Sec. 21 of the Constitution
7 of the State of Arkansas, and deprives the plaintiff of the interest in said judgment contrary to Article 19, Sec. 13 of the Constitution of the State of Arkansas that it impairs the obligation of a contract contrary to Section 10, Article 1 of the Constitution of the United States, and deprives the plaintiff of its property without due process of law contrary to the 14- Amendment of the Constitution of the United States.

Petitioner alleges that the amounts paid by said County, has not, at any time amounted to as much as the interest due upon said judgment; that the County Judge, sheriff and collector, and the County Treasurer, each and everyone, refuse to make any further appropria-

tions or payments upon said judgment insisting and contending that said Act is valid and that said judgment has been fully paid off and satisfied.

Petitioner alleges that there is now money in the hands of Claude Thompson Sheriff and collector which should be applied upon said judgment, the amount of which is to this plaintiff unknown; that there is now in the hands of —— ——, Treasurer of said County, money which should be applied to the payment and satisfaction of said judgment, the amount of which is to petitioner unknown. That said officers refuse to apply any part of said sums toward the payment of said judgment.

Wherefore, your petitioner prays that a writ of mandamus be issued out of this court directed to said Claude Thompson as Sheriff and Collector of said County compelling him to show to this court the amounts and sums of money he has in his hands, and under his control as such sheriff and collection for said Greenwood District of Sebastian County; that the said —— —— as Treasurer of said County be required to report to this court, what sums of money he may have in his hands or possession, belonging to said
8 Greenwood District of said county, which should be appropriated toward the payment of said judgment; that upon the answer and report of said defendants this court make proper order for the payment of said sums toward the satisfaction of said judgment, that a writ of mandamus issue against each of said defendants and for such other and further orders as may seem necessary for the enforcement of the payment of said judgment, and your petitioners will ever pray.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY,
By B. R. DAVIDSON, *Attorney.*

EXHIBIT A.

Original Judgment, Entered January 26, 1891.

Complaint at Law, No. 8.

MISSOURI AND ARKANSAS LUMBER & MINING COMPANY

vs.

SEBASTIAN COUNTY, ARKANSAS, GREENWOOD DIST.

On this day come the plaintiff, the Missouri and Arkansas Lumber and Mining Company, by its attorneys, Messrs. Clayton, Brizzolara & Forrester; and come said defendant, Sebastian County by its attorney J. B. McDonough, Esq., and both parties having announced themselves ready for trial, it is ordered by the court that a jury come to try the issue joined. Whereupon the following were selected for the trial of this cause, to-wit:

9

Robt. Whiting,	James Tauered,
M. S. Cohn,	John H. Mayers,
Abe Mayer,	John Colbert,
J. A. Hoffman,	Geo. L. Carnahan,
Richard Stephens,	E. A. Thomas,
Mat Klink,	John Smith P.,

Twelve good and qualified electors of the Western District of Arkansas, duly selected, empaneled and sworn to try the issue joined and a true verdict render according to the law and the evidence. And after hearing the evidence and the argument of counsel, and receiving the charge of the court, retired to consider of their verdict, and after some time returned into court the following verdict, to-wit:

"We the jury find for the plaintiff in the sum of Thirteen Thousand Seven Hundred Three & 29/100 dollars ($13,703.29)."

(Signed) ABE MAYER, *Foreman.*

Whereupon the jury was discharged from the further consideration of the case. And

It is considered by the court that the plaintiff the Missouri and Arkansas Lumber and Mining Company do have and recover of and from the defendant, Sebastian County, Greenwood District, the sum of Thirteen Thousand, Seven Hundred and Three & 29/100 ($13,703.29) dollars, with interest at the rate of six per cent per annum from this date until paid together with all its costs in and about this case laid out and expended.

(Endorsements on margin of record:)

$576.00. Received on within judgment Five Hundred & Seventy-six Dollars. This Aug. 7, 1896. B. R. Davidson Att'y Pl't'ff.

$1,176.00. Received on this within judgment Eleven Hundred & Seventy-six Dollars. This 29th day of May, 1897. B. R. Davidson, Att'y Pl't'ff.

$849.96. Received on the within judgment this 23rd July, 1897, $849.96. W. S. Pollard, Att'y for Plaintiff.

Payment- on this judgment of March 6th, 1905 of $500.00 and of April 3, 1905 of $500.00 (total $1,000.00 for the two dates) are hereby acknowledged. This September 8th, 1905. Mo. & Ark. Lumber & Mining Co., by Joseph M. Spradling, Att'y. Attest, Wm. S. Wellshear, Clerk.

10 July 9, 1903, ordered by the court that a credit of $2000.00 (Two Thousand) *Dollars* be entered in accordance with a receipt presented to the court and to the clerk signed by Joseph M. Spradling, Att'y for Missouri & Ark. Lumber & Mining Co. Attest: Thos. Boles, Clerk by Florence Hammersly, D. C.

Payment on this judgment this day acknowledged of the sum of $1000.00. Paid April 4, 1904, and of the sum of $1000.00 made July 19, 1904. Missouri & Ark. Lumber & Mining Co., by Joseph M. Spradling, Att'y. Attest: Thos. Boles, Clerk, by H. B. Armstead. Aug. 13th, 1904.

EXHIBIT B.

Common Law Record 5, p. 414.

January Term, 1900, Saturday, June 9, 1900.

MISSOURI & ARKANSAS LUMBER & MINING CO.

vs.

SEBASTIAN COUNTY, ARKANSAS, GREENWOOD DIST.

On this day this cause coming on to be heard, comes the plaintiff by attorney B. R. Davidson, and the defendant by attorney Joseph M. Spradling, and the defendant in open court elects to withdraw all its motions, demurrers and answers heretofore interposed, without prejudice and consents to a revivor of the judgment herein, and it appearing to the court that on the 26th day of January, 1891, the plaintiff recovered in this court a judgment against the defendant, Sebastian County, Arkansas, Greenwood District, for the sum of $13,703.29, with interest at the rate of six per cent per annum from that date until paid, together with all its costs in and about said case laid out and expended, and it further appearing that no part of said judgment has been paid except the sum of $576 which was
11 paid on the 7th day of August, 1896, and the sum of $1176.00 which was paid on the 29th day of May, 1897, and the sum of $849.96 which was paid on the 23rd day of July, 1897, and that said judgment is wholly unsatisfied with the exception of said payments, and which judgment appears on the Common Law Record Book No. 1 of this court at page- 461 and 462. And it appearing that the defendant has been duly served, with process in this action, and no cause being shown to the contrary.

It is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid and satisfied as hereinbefore stated, be and the same is, hereby revived.

It is further considered ordered and adjudged that the plaintiff have all its costs in that behalf laid out and expended."

EXHIBIT C.

Rec. 7, pp. 329-30, January 18, 1910.

In the United States Circuit Court, Western District of Arkansas, Fort Smith Division.

Complaint at Law, No. 324.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, GREENWOOD DISTRICT, Defendant.

Record Entry.

12 On this day this cause coming on to be heard, comes the plaintiff by attorney B. R. Davidson, and the defendant having been duly and legally summoned for more than twenty days before the commencement of the present term of court, came not, but made default.

And it appearing to the court that on the 26th day of January, 1891, the plaintiff recovered judgment in this court against the defendant, Sebastian County, Arkansas, Greenwood District, for the sum of Thirteen Thousand, Seven Hundred Three and Twenty-Nine hundredths ($13,703.29) Dollars, with interest at the rate of six per cent per annum from that date until paid, together with all costs in and about said cause laid out and expended.

And it further appearing that on the 9th day of June, 1900, upon a petition duly filed in this court, upon which service was duly had, the defendant appearing, said judgment was revived by judgment in this court duly entered. And it further appearing to this court that no part of said judgment has ever been paid except the sum of $576.00 paid on August 7th, 1896, the sum of $1176.00 paid on May 29th, 1897, and the further sum of $849.96 paid on July 23d, 1897. All of which sums were paid before said judgment was revived. And the further sums which have been paid since said judgment was revived, to-wit:

July 9th, 1903	$2,000.00	
April 28th, 1904	1,000.00	
July 19th, 1904	1,000.00	
March 6th, 1905	1,000.00	
April 3rd, 1905	500.00	
September 19th, 1906	500.00	
July 5th, 1907	500.00	and
April 16th, 1909	1,000.00	

And it appearing that said judgment is wholly unsatisfied with the exception of said payments, which judgment appears on the

13 common law record book No. 1 of this court, pages 461 and 462, and which judgment of revivor appears on the Common Law Record of this court at Book 5 page No. 414.

And it appearing that the defendant has been duly and legally served with process, and no cause being shown to the contrary, it is therefore considered ordered and adjudged that the said judgment in so far as the same has not been paid as hereinbefore stated, be and the same is hereby revived and renewed. And it is further considered, ordered and adjudged that the plaintiff have and recover all its costs in this behalf laid out and expended.

14 *Demurrer to Petition.*

(Filed in U. S. District Court July 12, 1916.)

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

GREENWOOD DISTRICT, SEBASTIAN COUNTY, ARKANSAS, Defendant.

Demurrer.

Comes the defendant herein and demurs to the petition of the plaintiff and for grounds therefor, states:

That said petition does not state facts sufficient to entitle the plaintiff to the relief prayed for.

I. S. SIMMONS,
Pros. Att'y;
THOS. B. PRYOR,
Attorneys for Defendant.

15 *Motion to Require Plaintiff to Enter Satisfaction of Judgment.*

(Filed in U. S. District Court July 12, 1916.)

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

GREENWOOD DISTRICT, SEBASTIAN COUNTY, ARKANSAS, Defendant.

Motion to Require the Plaintiff to Enter Satisfaction of Judgment Herein.

Comes the defendant and moves the court to require the plaintiff to enter satisfaction of judgment herein rendered against it on January 26th, 1891, for the sum of $13,703.29.

That said judgment has been fully paid and the plaintiff refuses to enter satisfaction thereof.

I. S. SIMMONS,
Pros. Att'y;
THOS. B. PRYOR,
Attorneys for Defendant.

16 *Answer to Motion to Satisfy Judgment.*

(Filed in U. S. District Court September 6, 1916.)

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

Petition for Mandamus.

SEBASTIAN COUNTY, ARKANSAS, Plaintiff,

vs.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Defendant.

Answer to Motion to Satisfy Judgment.

The Missouri & Arkansas Lumber & Mining Company for answer to the motion of plaintiff to require the satisfaction of the record states:

I.

The Act of the Legislature of March 21, 1893, on which plaintiff in said motion relies, is void as it deprives the defendant of its property without due process of law, contrary to Article II Section 8 of the Constitution of the State of Arkansas.

II.

The said Act is discriminatory and deprives this defendant of its property, not allowing six per cent per annum interest, contrary to Article XIX Section 13, of the Constitution of the State of Arkansas.

III.

It impairs the obligation of contracts evidenced by judgment, contrary to Article II Section 17 of the Constitution of the
17 State of Arkansas.

IV.

It impairs the obligations of contracts, contrary to Article I Section 10 of the Constitution of the United States.

V.

It deprives this defendant of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

VI.

The liability of the plaintiff in said motion to pay to this defendant six per cent per annum interest from the date of the judgment to the date of its final payment is res judicata, having been adjudicated in the original judgment in this cause, and also in the judgment reviving same on June 9, 1900, and January 18, 1910.

Wherefore, this defendant prays that said motion be denied.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY,
By B. R. DAVIDSON, *Its Attorney.*

18 *Record of Hearing and Submission.*

(Entered in U. S. District Court September 6, 1916.)

No. 617. Law.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

This day comes the plaintiff by B. R. Davidson, its attorney, and comes the defendant by T. B. Pryor and I. S. Simmons, its attorneys, and plaintiff files answer to defendant's motion to require satisfaction of judgment to be entered.

Whereupon, this cause comes on to be heard on the pleadings and an agreed statement of facts, and is argued by counsel and submitted.

19 *Record of Order Overruling Demurrer to Petition and Allowing Defendant to Answer.*

(Entered in U. S. District Court November 4, 1916.)

No. 617. Law.

MISSOURI AND ARKANSAS LUMBER AND MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

This cause having been heretofore submitted, and the court having now considered the demurrer to the complaint herein, and being well and sufficiently advised in the premises, doth overrule the said demurrer, and on motion defendant is allowed five days from this date in which to file answer.

20 *Record of Answer to Petition Filed.*

(Entered in U. S. District Court November 9, 1916.)

No. 617. Law.

MISSOURI AND ARKANSAS LUMBER AND MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

This day comes the defendant by T. B. Pryor, Esq., its attorney, and files answer in the above entitled cause.

21 *Answer to Petition for Mandamus.*

(Filed in U. S. District Court November 9, 1916.)

MISSOURI & ARKANSAS LUMBER & MINING CO., Plaintiff,

vs.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY, ARKANSAS, Defendant.

Answer.

Now comes the defendant, the Greenwood District of Sebastian County, Arkansas, and makes the following answer to the petition for mandamus filed in this cause by the Missouri & Arkansas Lumber & Mining Company:

Admits that the Missouri & Arkansas Lumber & Mining Co., is an incorporated company by and under the laws of the State of Illinois and a citizen of said State.

Admits that on January 26, 1891, said corporation, in a suit in which it was plaintiff in the United States Circuit Court for the Western District of Arkansas, Fort Smith Division, obtained a judgment against the County of Sebastian in said State for the sum of $13,703.29 and costs of suit, which judgment was rendered and entered of record in the following language:

"It is considered by the court that the plaintiff, the Missouri & Arkansas Lumber and Mining Company do have and recover of and from the defendant, Sebastian County, Greenwood District, the sum of Thirteen Thousand, seven hundred and three and twenty-nine one hundredths ($13,703.29) dollars, with interest at the rate of six per cent. per annum from this date until paid, together with all its costs in and about this case laid out and expended."

A copy of which judgment was filed with and made a part of the said petition and marked "Exhibit A."

Admits that thereafter, at the June term of the said United States Circuit Court, to wit: on June 9, 1900, on a petition filed to

22 revive said judgment upon which service was duly had upon the defendant, the defendant appeared by James M. Spradling, Attorney, and files its demurrer and answer thereto, and thereafter withdrew the same and judgment was entered into the following words:

"And it appearing to the court that on the 26th day of January, 1891, the plaintiff recovered in this court a judgment against the defendant, Sebastian County Arkansas, Greenwood District, for the sum of Thirteen Thousand seven hundred three and twenty nine one hundredths ($13,703.29) dollars, with interest at the rate of six per cent. per annum from that date until paid together with all its costs in and about said case laid out and expended, and it further appearing that no part of said judgment has been paid except the sum of $576.00 on the 7th of August, 1896, and the sum of $1176.00 on the 29th of May, 1897, and the sum of $849.96 on the 23rd of July, 1897, and that said judgment is wholly unsatisfied with the exception of said payments, and which judgment appears on the common law record book No. 1 of this court at page- 461 and 462, and it appearing that the defendant has been duly served with process in this action and no cause being shown to the contrary, it is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid and satisfied as hereinbefore stated, be and the same is hereby revived."

A copy of which judgment was filed with the petition filed herein and marked "Exhibit B."

Admits that thereafter on the 18th day of January, 1910, in said court after the filing of a petition to revive said judgment, upon which service was duly had upon the defendant for more than twenty days before the commencement of the January term of said court, the defendant failing to appear, the following judgment was made and entered by said court, to-wit:

"And it appearing to the court that on the 26th day of January, 1891, the plaintiff recovered judgment in this court against the defendant, Sebastian County Arkansas, Greenwood District, for the sum of Thirteen Thousand seven hundred three and twenty-nine one hundredths ($13,703.29) dollars, with interest at the rate of six per cent. per annum from that date until paid, together with all costs in and about said case laid out and expended."

And the said judgment reciting the revivor of said judgment on the 19th of June, and reciting further "and the further sums which have been paid since said judgment was revived, to-wit:

23

July 9, 1903	$2000.00
April 28, 1904	1000.00
July 19, 1904	1000.00
March 6, 1905	500.00
September 19, 1906	500.00
July 5, 1907	500.00
April 6, 1909	1000.00

"And it appearing that the said judgment is wholly unsatisfied with the exception of said payments, which judgment appears on the common law record book No. 1 of this court, pages 461 and 462, and which judgment of revivor appears on the Common Law Record of this court in Book 5 at page No. 414.

"And it appearing that the defendant has been duly and legally served with process and no cause being shown to the contrary, it is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid as hereinbefore stated, be and the same is hereby revived."

A copy of which judgment of revivor was filed with and made a part of said petition filed herein and marked "Exhibit C."

Admits that since last said revivor there has been paid upon said judgment, the following sums to-wit:

On April 13, 1909	$1000.00
On July 10, 1914	1000.00
On August 25, 1914	1000.00

Admits that the total amount of payments made upon said judgment aggregate $—, which is the face amount of said judgment counting interest at the rate of six per cent. per annum from the rendition of the same on the 26th day of January, 1891 until the passage of the Act of the legislature forbidding the payment of interest upon judgments, of March 21st, 1893.

Denies that the act of the legislature of March 21, 1893 forbidding the payment of interest on judgments already rendered in the United States Court, which judgments were for interest at the rate of six per cent. per annum, is unconstitutional and void, and deprives the plaintiff of his property without due process of law contrary to Article 2, Section 1 of the Constitution of the State of Arkansas, and deprives the plaintiff of the interest in said judgment
24 contrary to Article 19, Section 13 of the Constitution of the State of Arkansas; that it impairs the obligation of a contract contrary to Section 10, Article 1 of the Constitution of the United States, and deprives the plaintiff of its property without due process of law contrary to the 14th Amendment to the Constitution of the United States.

Denies that the amounts paid by said county have not at any time amounted to as much as the interest due upon said judgment; and admits that the county judge, sheriff and collector and the county treasurer, each and every one refuse to make any further appropriations or payments upon said judgment, insisting and contending that said act is valid and that said judgment has been fully paid off and satisfied.

Denies that there is now money in the hands of Claude Thompson, Sheriff and Collector, which should be applied upon said judgment, the amount of which is to the plaintiff unknown; and that there is now in the hands of —— ——, Treasurer of said county, money that should be applied to the payment and satisfaction of said judgment, the amount of which is to the petitioner unknown;

and that the said officers refuse to apply any part of said sums toward the payment of said judgment.

For further answer the defendant states that this cause of action is based upon county warrants of this county, which were non-interest bearing evidences of indebtedness, the total number of counts in the complaint being 287, all based upon warrants of the Greenwood District of Sebastian County for various sums, aggregating the sum of $13,703.29. A copy of a portion of said complaint, including the first count and final prayer for relief, is filed herewith as a part of this answer and marked "Exhibit A."

For further answer the defendant states that the answer to said complaint filed in this case shows that the suit was based upon warrants of this county and that the warrants did not bear interest and that there was no joinder of issue upon the question of interest. A copy of the said answer being filed herewith as a part of this answer and marked "Exhibit B."

For further answer the defendant states that the instructions of the court at the trial of this cause shows that the suit was based upon county warrants of this county and that there was no issue of interest involved, as the court indicated in its instructions in saying:

"If you find that the scrip sued upon was issued by the Greenwood District of this county, you will find a verdict for the aggregate amount of such scrip so issued without interest."

A copy of said instructions being filed herewith as a part of this answer and marked "Exhibit C."

And further answering the defendant states that if judgment were recovered by the plaintiff in this court for the amount hereinbefore set out, with interest at the rate of six per cent. per annum from date of rendition of the judgment until paid, and payment of judgment and interest were made in full up to March 21, 1893, then the said judgment has been fully satisfied and no more is due upon the same in the way of principal or interest, because such payment of interest after the 21st of March, 1893, was prohibited, as a legislative enactment took effect on that date which provided that "no judgment rendered or to be rendered against any county in the state on county warrants, or any other evidences of indebtedness, shall bear any interest after the passage of this act."

Wherefore, defendant prays that the plaintiff's petition for a writ of mandamus be denied, and for further relief to which the defendant may be entitled.

THOS. B. PRYOR,
Attorney for Defendant.

26 "EXHIBIT A."

UNITED STATES OF AMERICA,
Western District of Arkansas:

In the United States Circuit Court for the Western District of Arkansas.

THE MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

THE COUNTY OF SEBASTIAN, Defendant.

Complaint at Law.

Now comes the Missouri & Arkansas Lumber and Mining Company, plaintiff herein, and respectfully represents:

That it is a corporation, incorporated, organized and existing under the laws of the State of Illinois, and a citizen of that State; that it brings this, its suit, against the defendant, the County of Sebastian, a quasi corporation, organized and existing under the laws of the State of Arkansas, and a citizen of the State of Arkansas, and a resident of the Western District of Arkansas, aforesaid, and complaining of said defendant, for cause of action, says:

First. That, whereas, heretofore, to-wit: on the 7th day of November, A. D., 1889, at the town of Greenwood, in the County of Sebastian, in the Greenwood District thereof, and in the State of Arkansas, and within the Western District of the State of Arkansas, said defendant, the County of Sebastian, for a valuable consideration had and received for and on behalf of the Greenwood District of said County of Sebastian, drew her warrant upon the Treasurer of said County of Sebastian; said warrant being in the following words and figures, to-wit:

27 "STATE OF ARKANSAS:

No. 1439. $7.65.

The Treasurer of the County of Sebastian, Greenwood District:

October Term, A. D. 1889. Law.

Nov. 7, 1889.

Pay to A. A. McDonald or bearer Seven 65/100 Dollars, out of any money in the Treasury appropriated for ordinary purposes.

Given at Greenwood, Arkansas, this 7th day of November, 1889.
Docket No. 637..

By C. H. HOWE, *Dep'y,*
JESSE A. BELL, *Co. Clerk.*"

That afterwards, on the day of the date of said warrant, said A. A. McDonald, to whom, or bearer, said sum of money, in said warrant specified, was directed to be paid, sold and delivered the said warrant to plaintiff, who became and now is the lawful owner and holder thereof; that on the 27th day of August, A. D., 1890, plaintiff presented said warrant to the Treasurer of said County of Sebastian, to whom said warrant was directed, and demanded payment of said sum of money herein specified; that the payment of said warrant was refused by the aforesaid Treasurer; that the plaintiff is the owner and holder of said warrant, and that the same is now due and unpaid; that demand for payment thereof has been made on said defendant, and that there is now due and unpaid thereon the sum of Seven Dollars and Sixty-five cents, according to the tenor and effect of said warrant, and that a right of action has accrued thereon to this plaintiff.

Wherefore plaintiff demands judgment against the said defendant for the sum of Seven Dollars and Sixty-five cents, with interest from the date of the commencement of this action, and other
28 proper relief.

There were 287 counts in the complaint, all based upon County warrants for various amounts, aggregating the sum of $13,706.34; the prayer to the complainant being as follows:

Wherefore the plaintiff prays judgment against the said defendant in the Greenwood District of Sebastian County on the above and foregoing several and separate causes of action set forth and mentioned in plaintiff's complaint for the said sums of money therein set forth, amounting in all to the aggregate sum of $13,706.34, together with interest thereon from the date of the commencement of this suit, and all of its costs in and about this cause laid out and expended, and for further and other proper relief.

"EXHIBIT B."

In Circuit — for the United States for Western District of Arkansas.

THE MISSOURI & ARKANSAS LUMBER AND MINING COMPANY, Plaintiff,

vs.

THE COUNTY OF SEBASTIAN, Defendant.

Comes the defendant, and denies that the plaintiff is a corporation organized and existing under the laws of the State of Illinois, and denies that the plaintiff is a citizen of the State of Illinois, but states the truth to be that plaintiff is a partnership existing under the
29 laws of the State of Arkansas, and denies that plaintiff has the right to sue in this court. Plaintiff has no authority to own or have the warrant sued on, and no right to bring suit on same, and denies that said warrants set out in the complaint are warrants of the

defendant, and denies that defendant is indebted to plaintiff in any sum whatever.

Wherefore defendant prays judgment.

J. B. McDONOUGH,
Attorney for Defendant.

(Endorsed:) Filed Jan. 15, 1890. S. Wheeler, Clerk.

"EXHIBIT C."

In the United States Circuit Court for the Western District of Arkansas.

THE MISSOURI AND ARKANSAS MINING AND LUMBER COMPANY

vs.

THE GREENWOOD DISTRICT OF SEBASTIAN COUNTY.

GENTLEMEN OF THE JURY: The plaintiff in this case, as a corporation of the State of Illinois, has brought suit against the County of Sebastian, Greenwood District, in this State, upon 287 pieces of scrip issued by said District of said County. The defendant in the answer denies that plaintiff is a corporation as alleged in its petition; it denies that the plaintiff is a citizen of the State of Illinois, and asserts that the plaintiff is a citizen of the State of Arkansas, therefore denies that plaintiff has a right to sue defendant in this court. It further alleges in its answer that plaintiff has no authority to own or have the warrant sued on, and no right to bring suit on same; denies that defendant is indebted to plaintiff in any sum whatever.

The certificate of incorporation issued by the Sec. of State of Illinois, shows that plaintiff is a corporation under the laws of the State of Illinois, and it being created under the laws of that state as a corporation, it has a status as a citizen of that State, and the County being a citizen of the State of Arkansas, these conditions would give the plaintiff the right to bring its suit in this court. The warrants sued on are warrants issued by the Greenwood District of Sebastian County under the law of the State, and while they do not possess full negotiable character, yet they have one element of negotiable paper—that is, they pass from hand to hand by delivery, being made payable to bearer, and this plaintiff would have a right to become owner of them for a valuable consideration. And would have a right to bring suit on them in this court against the County.

It is claimed by the defendants that the sueable character of the County is taken away by the Act of Legislature of Feb. 7", 1879, which is as follows:

"Sec. 1. That Sec. 937, 938 to 949 inclusive and Sec. 4516 of Gantts' Digest of the Statutes of Arkansas, and all laws and parts of laws making counties corporations, and authorizing them to sue and be sued as such, be, and they and each of them, are hereby repealed.

Sec. 2. That hereafter all persons having demands against any County, shall present the same duly verified according to law
31 to the County Court of said County for allowance or rejection.

Sec. 3. When any County has any demand against any person or corporation, suit thereon may be brought in the name of the State for the use of the County."

As long as the legislature of the State permits a County to contract a mutual obligation as evidences of indebtedness either directly to citizens of other States, or which may pass to them by purchase, such legislature can not prevent such citizens from bringing suit in a Federal Court in the State of the County by a law that provides that Counties cannot be sued, for the laws of the State permits a County to create on behalf of the citizens of other states, a property right as against the County, and this gives the right to such citizens to sue the County in the Federal Court, and such right is one that is beyond the control of the legislative action of the State and can be regulated alone by the Constitution and laws of the United States.

This condition is sufficient to settle the right of the plaintiff to bring suit in this court upon the subject matter upon which the suit is brought.

If you should find that the scrip sued upon was issued by the Greenwood District of the County, you will find a verdict for the aggregate amount of such scrip so issued without interest.

(Endorsed:) Judge's charge.

32 *Record of Order Allowing Plaintiff Time in which to Plead.*

(Entered in U. S. District Court November 11, 1916.)

No. 617. Law.

MISSOURI AND ARKANSAS LUMBER AND MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

This day on motion of the plaintiff by B. R. Davidson, its attorney, it is ordered that the plaintiff be, and is hereby, allowed until November 20, 1916, to plead to the answer in the above entitled cause.

33 *Motion to Strike Out Paragraph of Answer.*

(Filed in U. S. District Court November 18, 1916.)

MISSOURI & ARKANSAS LUMBER & MINING Co., Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

SEBASTIAN COUNTY, ARKANSAS, Plaintiff,

vs.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Defendant.

Motion to Strike Out Paragraph of Defendant's Answer.

The plaintiff moves the court to strike out the paragraph of defendant's answer regarding the instructions of the court at the trial of this cause, which refers to exhibit "C" of said answer and also moves to strike said exhibit from said answer.

MISSOURI & ARKANSAS LUMBER & MINING CO.,
By B. R. DAVIDSON, *Attorney.*

34 *Demurrer to Answer.*

(Filed in U. S. District Court November 18, 1916.)

MISSOURI & ARKANSAS LUMBER & MINING Co., Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, Defendant.

SEBASTIAN COUNTY, ARKANSAS, Plaintiff,

vs.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Defendant.

Demurrer.

The plaintiff for demurrer to the answer of the defendants herein, says:

First. That the facts set forth in the answer do not constitute a defense against the cause of action set forth in the complaint.

Second. The Act of the Legislature of March 21st, 1893, on which the defendants rely, is void, as it deprives the plaintiff of its property without due process of law, contrary to Article II, Section 8, of the Constitution of the State of Arkansas.

the plaintiff's petition for mandamus as Exhibit "A," also the record reviving said judgment entered on the records of this court on June 9, 1906, was read in evidence to the court, copy of which judgment is appended to the petition for mandamus marked Exhibit "B," also the record of the revivor of said judgment entered on the 18th day of January, 1910, was read in evidence to this court, a copy of which judgment of revivor is appended to the petition for mandamus as exhibit "C." And thereupon, it was
39 agreed in open court that the payments recited in said record entries had been made on said judgment as therein stated and that additional payments had since been made equal to but not exceeding in amount the original judgment and interest thereon at the rate of six per cent per annum from the date of the entry of said original judgment up to and including the 21st day of March, 1893. It is further agreed in open court that application had been made to the defendants for payments upon said judgment but that each of said defendants had refused to make any further payments thereon for the reason that they insisted that the act of the Legislature of Arkansas of March 21, 1893, was valid and that said judgment had been fully paid off and should be satisfied. Thereupon, the defendants offered in evidence the complaint against the Greenwood District of Sebastian County, filed in the original cause, in words and figures as follows: (Here the clerk will copy the original complaint including the heading and first page down to and including the first count, and first piece of scrip, and state, after copying the first count, that the complaint contained numerous counts of a similar nature, but by agreement of counsel, they are not copied into the record. Copy last page of complaint including prayer for relief, signatures and filing.)

Complaint in Original Cause.

UNITED STATES OF AMERICA,
Western District of Arkansas:

In the United States Circuit Court for the Western District of Arkansas.

THE MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

THE COUNTY OF SEBASTIAN, Defendant.

Complaint at Law.

Now comes the Missouri & Arkansas Lumber and Mining
40 Company, plaintiff herein, and respectfully represent-:—
That it is a corporation incorporated, organized and existing under the laws of the State of Illinois, and a citizen of that State; that it brings this, its suit, against the defendant, the County of Sebastian, a quasi corporation, organized and existing under the

laws of the State of Arkansas, and a citizen of the State of Arkansas, and a resident of the Western District of Arkansas aforesaid; complaining of said defendant, for cause of action, says:—

First. That, whereas, heretofore, towit, on the 7th day of November, A. D. 1889, at the Town of Greenwood, in the County of Sebastian, in the Greenwood District thereof, and in the State of Arkansas, and within the Western District of Arkansas, said defendant, the County of Sebastian, for valuable consideration had and received, for and in behalf of the Greenwood District of said County of Sebastian, drew her warrant upon the Treasurer of said County of Sebastian; said warrant being in the following words and figures, towit:

STATE OF ARKANSAS:

No. 1439. $7.65.

The Treasurer of the County of Sebastian, Greenwood District:

October Term, A. D. 1889.

Allowed Nov. 7, 1889.

Pay to A. A. McDonald, or bearer Seven 65/100 Dollars Out of any money in the Treasury, Appropriated for Ordinary Purposes.
Given at Greenwood, Ark., this 7th day of November, 1889.
Docket No. 637.

By C. H. HOWE, *Dep'y*,
JESSE A. BELL, *Co. Clerk*.

That afterwards, on the day of the date of said Warrant, said A. A. McDonald, to whom, or bearer, said sum of money, in said Warrant specified, was directed to be paid, sold and delivered the said Warrant to plaintiff, who became and now is the lawful owner and holder thereof; that on the 27th day of August, A. D. 1890, plaintiff presented said Warrant to the Treasurer of said County of Sebastian, to whom said Warrant was directed, and demanded payment of said sum of money therein specified; that the payment of said Warrant was refused by the aforesaid Treasurer; that the plaintiff is the owner and holder of said Warrant, and that the same is now due and unpaid; that demand for payment thereof has been made on said defendant, and that there is now due and unpaid thereon the sum of Seven Dollars and Sixty Five Cents, according to the tenor and effect of said Warrant, and that a right of action has accrued thereon to this plaintiff.

Wherefore, plaintiff demands judgment against the said defendant for the sum of Seven Dollars and Sixty Five Cents, with
41 interest from the date of the commencement of this action, and other proper relief.

Here follow numerous counts of a similar nature, which by agreement of counsel are not copied into the record.

Wherefore, the plaintiff prays judgment against the said defendant, and the Greenwood District of said County of Sebastian, on the above and foregoing several and separate causes of action, set forth and mentioned in plaintiff's complaint; for the said sums of money therein set forth, amounting in all to the aggregate sum of Thirteen Thousand Seven Hundred and Six Dollars and Thirty Four Cents, together with interest thereon from the date of the commencement of this suit, and all its costs in and about this cause laid out and expended, and for further and other proper relief.

CLAYTON, BRIZZOLARA & FORRESTER,
Attorneys for Plaintiff.

We undertake that the plaintiff, the Missouri and Arkansas Lumber and Mining Company shall pay to the defendant, the County of Sebastian, and to the officers of the court, all costs that may accrue to them in this cause, either in the Circuit Court of the United States for the Western District of Arkansas, of any other court to which it may be carried.

JAMES BRIZZOLARA.
WM. H. H. CLAYTON.

Filed Sept. 6th, 1890. Stephen Wheeler, Clerk, by I. M. Dodge, D. C.

It was agreed in open court that there were numerous like counts that need not be copied into the record.

Defendants also introduce original answer of Greenwood District. (Which orignal answer clerk will copy.)

Answer in Original Cause.

In Circuit — for the United States for Western District of Arkansas.

THE MISSOURI AND ARKANSAS LUMBER AND MINING COMPANY,
Plaintiff,

VS.

THE COUNTY OF SEBASTIAN.

Comes the defendant and denies that plaintiff is a corporation organized and existing under the laws of the State of Illinois, and denies that the plaintiff is a citizen of the State of Illinois, but states the truth to be that plaintiff is a partnership existing under the laws of the State of Arkansas, and denies that plaintiff has the right to sue defendant in this court. Plaintiff has no authority to own or have the warrants sued on, and no right to bring suit on same, and denies that said warrants set out in the complaint are the

42 warrants of the defendant, and denies that defendant is indebted to the plaintiff in any sum whatever.

Wherefore defendant prays judgment.

J. B. McDONOUGH,
Att'y for Defendant.

Filed Jan. 15, 1890. S. Wheeler, Clerk.

Thereupon, the defendants read in evidence to the court over objection of the plaintiff, the instructions of the court given in the original cause, in words and figures as follows:

(Here the clerk will copy instructions.)

Instructions in Original Cause.

In the United States Circuit Court for the Western District of Arkansas.

THE MISSOURI AND ARKANSAS MINING AND LUMBER CO.

vs.

THE GREENWOOD DISTRICT OF SEBASTIAN COUNTY.

GENTLEMEN OF THE JURY: The plaintiff in this case as a corporation of the State of Illinois has brought suit against the County of Sebastian, Greenwood District, in this State, upon 287 pieces of script issued by said District of said County. The defendant in the answer denies that plaintiff is a corporation as alleged in its petition; it denies that the plaintiff is a citizen of the State of Illinois, and asserts that the plaintiff is a citizen of the State of Arkansas, therefore denies that plaintiff has a right to sue defendant in this court. It further alleges in its answer that plaintiff has no authority to own or have the warrant sued on, and no right to bring suit on same; denies that said warrant- set out in the complaint are the warrants of the defendant; denies that defendant is indebted to plaintiff in any sum whatever.

The certificate of Incorporation, issued by the Sec. of State of Illinois, shows that plaintiff is a corporation under the Laws of the State of Illinois, and it being created under the laws of that state as a corporation, it has a status as a citizen of that State, and the County being a citizen of the State of Arkansas this condition would give the plaintiff the right to bring its suit in this court. The warrants sued on are warrants issued by the Greenwood District of Sebastian County, under the law of the State, and while they do not possess full negotiable character yet they have one element of
43 negotiable paper—that is, they pass from hand to hand by delivery, being made payable to bearer, and this plaintiff would have a right to become a- owner of them for a valuable consideration. And would have a right to bring suit on them in this court against the County.

It is claimed by defendants that the sueable character of the County is taken away by the Act of Legislature of Feb. 7, 1879, which is as follows.

"Sec. 1. That Sec-. 937, 938, to 949, inclusive, and Sec. 4516 of Gantts' Digest of the Statutes of Arkansas, and all laws and parts of laws making counties corporation and authorizing them to sue and be sued as such, be, and they and each of them are hereby repealed.

Sec. 2. That hereafter all persons having demands against any county, shall present the same duly verified according to law, to the County Court of said County for allowance or rejection. * * *

Sec. 3. When any County has any demand against any person or Corporation, suit thereon may be brought in the name of the State for the use of the County. * * *"

As long as the legislature of the State permits a county to contract a mutual obligation as evidences of indebtedness either directly to citizens of other States, or which may pass to them by purchase, such legislature can not prevent such citizens from bringing suit in a Federal Court in the State or the County by a Law that provides that Counties can not be sued, for the Laws of the State permits a county to create on behalf of the citizens of other States, a property right as against the County, and this gives the right to such citizens to sue the County in the Federal Court, and such right is one that is beyond the control of any legislative action of the State, and can be regulated alone by the Constitution and Laws of the United States.

This condition is sufficient to settle the right of the plaintiff to bring suit in this court upon the subject matter upon which the suit is brought.

If you should find that the Scrip sued upon was issued by the Greenwood District of the County, you will find a verdict for the aggregate amount of such scrip so issued without interest.

To the reading of same and consideration of same, plaintiff excepted.

Thereupon the defendants read in evidence to the court over objection of the plaintiff, the answer of the Greenwood District of Sebastian County by J. M. Spradling which had been withdrawn from the records in June, 1900. (Here clerk will copy answer of the Greenwood District.)

44

Answer Withdrawn in June, 1900.

In the United States Circuit Court, Western Division of Arkansas, Fort Smith Division.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY, Plaintiff,

vs.

SEBASTIAN COUNTY, ARKANSAS, GREENWOOD DISTRICT, Defendant.

Comes the defendant, Sebastian County, Greenwood District, and for its amended answer, says:

First. Admits that it is true that the judgment set out in plaintiff's bill of complaint was rendered in this court on the 26th day of January, 1891, and for the sum of $13,703.29 with cost of suit. That the amount of $576.00 was paid on said judgment on the 7th day of August, 1896, and the sum of $1,176.00 was paid on the 29th day of May, 1897, and the further sum of $849.96 was paid on the 23rd day of July, 1897, as set out in plaintiff's bill of complaint.

Second. But denies that the plaintiff's judgment herein draws interest at the rate of six per cent, or any other rate, since the 21st day of March, 1893; and as a basis of such denial alleges that the General Assembly of the State of Arkansas, passed an act approved on the said 21st day of March, 1893, providing as follows: "That no judgment rendered or to be rendered against any County in the State on County Warrants or other evidence of county indebtedness shall bear any interest after the passage of this act." S. & H. Digest, Section 5083.

That said act has never been repealed or amended, but remains in full force and effect.

That the judgment sought to be revived is based upon county warrants issued by the County Court of Sebastian County for the Greenwood District; all of which warrants have been issued by said Court since the adoption of the Constitution of the State of Arkansas of 1874; Article XVI, Section I, of which provides, "Neither the State nor any City, County, Town or other municipality in this State shall ever loan its credit for any purpose whatever, nor shall any county, city, town or municipality ever issue any interest bearing evidence of indebtedness. Except such bonds as may be authorized by law to provide for and secure the payment of the present existing indebtedness, and the State shall never issue any interest bearing Treasury warrants or scrip."

That none of the County Warrants which form the basis
45 of the judgment sought to be revived were issued in payment of any indebtedness existing at or prior to the date of the adoption of said Constitution.

Wherefore the defendant insists that the plaintiff is not entitled to have said judgment revived as bearing interest at any rate since the 21st day of March, 1893, or to bear interest at any rate from henceforth.

SEBASTIAN COUNTY, ARKANSAS,
GREENWOOD DISTRICT,
By JOSEPH M. SPRADLING, *Attorney.*

STATE OF ARKANSAS,
County of Sebastian, ss:

On this 14th day of February, 1900, before me personally appeared Joseph M. Spradling, who, being by me duly sworn, deposes and says: that he is the attorney for the above named defendant, Sebastian County, Arkansas, Greenwood District, and that he has read the foregoing amended answer, and knows the contents thereof, and that

the same is true except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

[Seal of County Court.]

T. N. REED,
County Clerk,
By JNO. C. GARDNER,
Deputy Clerk.

Filed in open court this Feb'y 13, 1900. Thomas Boles, Clerk.

To the court's receiving and considering said answer, the plaintiff at the time objected and excepted.

The plaintiff asked the court to declare the law to be that the defendants, by the adjudications of the court, were estopped from claiming that the judgment should not bear interest from the time of the rendition of said judgment until paid, which the court declined to do, to which the plaintiff excepted.

Which was all of the evidence introduced before the court.

Thereupon, the plaintiff tendered to the court, this its bill
46 of exceptions containing all of the evidence, the findings and rulings of the court, and asked that the same be signed, sealed, ordered filed and ordered to be made a part of the records in this cause, which is accordingly done.

Witness my hand and seal as Judge of the United States District Court for the Western District of Arkansas, this first day of January, 1917.

FRANK P. YOUMANS, *Judge.*

47 *Petition for Writ of Error.*

(Filed in U. S. District Court January 1, 1917.)

MISSOURI & ARKANSAS LUMBER AND MINING COMPANY, Plaintiff,

VS.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY et al., Defendants.

The plaintiff in the above entitled cause prays a writ of error to the Supreme Court of the United States from the findings and judgment of the court in said cause this day rendered.

MISSOURI & ARKANSAS LUMBER AND MINING COMPANY, *Plaintiff,*
By B. R. DAVIDSON, *Attorney.*

48 *Assignment of Errors.*

(Filed in U. S. District Court January 1, 1917.)

MISSOURI & ARKANSAS LUMBER AND MINING COMPANY, Plaintiff,

vs.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY et al., Defendants.

Assignment of Errors.

Now, comes the above named plaintiff and files herein its prayer for appeal to the Supreme Court of the United States and says that there are errors in the decree and proceedings of the above entitled cause and for the purpose of having same reviewed by the United States Supreme Court, makes the following assignment of errors:

I.

The United States District Court erred in overruling the demurrer of the plaintiff to the answer of the defendants to the petition of the plaintiff for a writ of mandamus.

II.

Said court erred in holding that the act of the legislature of March 21, 1893 was valid and that said judgment ceased to bear interest at the rate of six per cent per annum after the 21st day of March, 1893, when it was expressly stated in said judgment when rendered prior to said act, that it should bear interest from the date of the judgment until paid at the rate of six per cent, said act being unconstitutional and void as to said judgment, and depriving the plaintiff of its property without due process of law, contrary to Article 2, Sections 8 and 21 of the Constitution of the State of Arkansas, and depriving the plaintiff of its interest in said
49 judgment contrary to Article 19, Section 13 of the Constitution of said State.

III.

The rulings of said court in holding said judgment to be fully paid by the payment of the interest up to March 21, 1893 and not thereafter, impaired the obligation of the contract, contrary to Section 10, Article 1 of the Constitution of the United States, and deprived the plaintiff of its property without due process of law, contrary to the 5th and 14th amendments to the Constitution of the United States.

IV.

The court erred in holding that the defendants were not estopped from alleging or claiming that said judgment bore interest, from

date until paid at the rate of six per cent when said judgment recited upon its face when rendered that it should bear interest from date until paid at the rate of six per cent per annum, and was revived from time to time.

V.

The court erred in requiring the plaintiff to satisfy said judgment, the same not having been paid, and in dismissing the petition for mandamus, and in rendering judgment against plaintiff for costs.

For which errors, the plaintiff, Missouri and Arkansas Lumber and Mining Company, prays that the said judgment of said District Court of the United States for the Western District of Arkansas be reversed and that judgment be rendered in favor of the plaintiff as prayed for in the petition, and also for costs of suit, and all other relief.

MISSOURI & ARKANSAS LUMBER & MINING COMPANY,
By B. R. DAVIDSON, *Attorney.*

50 *Bond on Writ of Error.*

(Filed in U. S. District Court January 20, 1917.)

Know all men by these presents,

That we, Missouri, & Arkansas Lumber & Mining Company as principal, and W. J. Johnston, as surety, are held and firmly bound unto Greenwood District of Sebastian County, Arkansas, Claude Thompson as Sheriff, and Marshall Strozier as Treasurer, in the full and just sum of Two Hundred and Fifty Dollars, to be paid to the said Greenwood District of Sebastian County, Arkansas, Claude Thompson as Sheriff, and Marshall Strozier as Treasurer, their successors, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors or assigns, jointly and severally by these presents. Sealed with our seals, and dated this 20th day of January, in the year of our Lord one thousand nine hundred and Seventeen.

Whereas, lately at the June Term, A. D. 1916, of the District Court of the United States for the Western District of Arkansas, in a suit depending in said court between Missouri & Arkansas Lumber & Mining Company, plaintiff and Greenwood District of Sebastian County, Arkansas, Claude Thompson as Sheriff, and Marshall Strozier as Treasurer, defendants, judgment was rendered against the said Missouri & Arkansas Lumber & Mining Company, and the said Missouri & Arkansas Lumber & Mining Company has obtained writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Greenwood District of Sebastian County, Arkansas, Claude Thompson as Sheriff, and Marshall Strozier as Treasurer, citing and ad-

51 monishing them to be and appear in the United States Supreme Court, at the City of Washington, D. C., Thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Missouri & Arkansas Lumber & Mining Company shall prosecute said writ of error to effect, and answer all costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

MISSOURI & ARKANSAS LUMBER & MINING COMPANY,

By B. R. DAVIDSON, *Att'y.* [SEAL.]

W. J. JOHNSTON. [SEAL.]

Approved by

FRANK A. YOUMANS, *Judge.*

52 *Certificate.*

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, certify the foregoing pages hereto annexed numbered 1 to 52 inclusive, contain and constitute a true and correct copy of the record, and of the assignment of errors, and of all proceedings in the case of Missouri & Arkansas Lumber & Mining Company vs. Greenwood District of Sebastian County, Arkansas et al., No. 617 Law, as the same appear on file and of record in my said office in the Fort Smith Division of said District.

In testimony whereof, I hereunto set my hand and affix the seal of said court at office in the City of Fort Smith, Arkansas, this January 24, 1917.

[Seal of the District Court, Western District of Arkansas, U. S. A.]

WM. S. WELLSHEAR, *Clerk.*

Endorsed on cover: File No. 25,820. W. Arkansas D. C. U. S. Term No. 990. Missouri & Arkansas Lumber & Mining Company, plaintiff in error, vs. Greenwood District of Sebastian County, Arkansas, Claude Thompson, as Sheriff, and Marshall Strozier, as Treasurer. Filed March 12th, 1917. File No. 25,820.

15

Office Supreme Court, U.
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JAMES D. MAHER,
CLERK

IN THE

Supreme Court of United States

MISSOURI & ARKANSAS LUMBER & MINING COMPANY,
Plaintiff in Error,

v.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY, ARKANSAS, CLAUDE THOMPSON, AS SHERIFF, AND MARSHALL STROZIER, AS TREASURER,

No. 149

STATEMENT, ABSTRACT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

JOHN H. VAUGHAN AND
B. R. DAVIDSON,
Attorneys for Plaintiff in Error.

INDEX.

PAGE.

Statement. 1

Abstract. 3

Petition for Mandamus 3
Exhibit "A"—Copy of Original Judgment. 6
Exhibit "B"—Copy of Record of Revivor, June 9, 1900. 7
Exhibit "C"—Copy of Record of Revivor, January 18, 1910 7
Demurrer. 8
Motion to Require Plaintiff to Enter Satisfaction Upon Judgment 8
Answer to Motion to Satisfy Judgment.... 8
Answer. 9
Exhibit "A"—Count 11
Prayer to Complaint 12
Exhibit "B"—Answer to Original Cause..13
Exhibit "C"—Instruction of the Judge....13
Motion to Strike 15
Demurrer to Answer 15
Judgment. 16
Bill of Exceptions 17
Declaration of Law Asked by Plaintiff....20

Assignment of Errors 21

Authorities. 24

Brief and Argument 33

IN THE

Supreme Court of United States

MISSOURI & ARKANSAS LUMBER & MINING COMPANY,
Plaintiff in Error,

v.

GREENWOOD DISTRICT OF SEBASTIAN COUNTY, ARKANSAS, CLAUDE THOMPSON, AS SHERIFF, AND MARSHALL STROZIER, AS TREASURER,

No. 990.

STATEMENT, ABSTRACT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT.

There are but two questions involved in this cause. On January 26, 1891, judgment was rendered in the United States District Court, for the Western District of Arkansas, in favor of the plaintiff in error for the sum of $13,703.29, "with interest at the rate of six per cent per annum from this date until paid." Subsequently on the 21st day of March, 1893, the legislature passed an

act providing that "no judgment rendered or to be rendered against any court (county?) in the state on county warrants or other evidence of county indebtedness shall bear interest after the passage of this act."

Acts Ark. 1893, p. 145.

(a) Can a legislature legislate out of a judgment, interest that has been adjudicated in favor of the plaintiff, when it is adjudicated that the judgment shall bear interest at a specified rate until paid?

On June 9, 1900, the above judgment was revived. The record recites the judgment as having been rendered "for the sum of $13,703.29, with interest at the rate of 6 per cent per annum from that date until paid, together with all its costs in and about said case laid out and expended" (reciting certain payments) "and that said judgment is wholly unsatisfied with the exception of said payments." * * * "It is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid and satisfied as hereinabove stated, be and the same is hereby revived."

On January 18, 1910, there was a like revivor.

(b) Does not such revivor revive the judgment as to interest at the rate of 6 per cent as well as to the amount of the principal?

ABSTRACT.

Petition for mandamus alleges, that the Missouri and Arkansas Lumber and Mining Company is an incorporated company. That on the 26th of January, 1891, it obtained judgment in the United States Circuit Court for the Western District of Arkansas, Fort Smith Division, against the County of Sebastian, for the sum of $13,703.29, and costs of suit, which was entered of record in the following language:

"It is considered by the court that the plaintiff, the Missouri & Arkansas Lumber and Mining Company do have and recover of and from the defendant Sebastian County, Greenwood District, the sum of $13,703.29/100 dollars, with interest at the rate of 6 per cent per annum from this date until paid together with all its costs in and about this case laid out and expended."

A copy of said judgment is appended to the petition as Exhibit "A." (Printed Rec. p. 6.)

Alleges the revivor of said judgment on June 9, 1900:

"And it appearing to the court that on the 26th day of January, 1891, the plaintiff recovered in this court a judgment against the defendant,

Sebastian County, Arkansas, Greenwood District, for the sum of thirteen thousand seven hundred three and twenty-nine one hundredths ($13,703.29) dollars with interest at the rate of six per cent per annum from that date until paid together with all its costs in and about said case laid out and expended, and it further appearing that no part of said judgment has been paid except (except certain payments recited) * * * and that said judgment is wholly unsatisfied with the exception of said payments, and which judgment appears on the common law record book No. 1, of this court at page 461 and 462, and it appearing that the defendant has been duly served with process in this action and no cause being shown to the contrary, it is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid and satisfied as hereinbefore stated, be and the same is hereby revived."

A copy of said judgment was made Exhibit "B" to the complaint. (P. Rec. p. 8.)

Alleges a like revivor of said judgment on the 18th day of January, 1900, in the same language. (Ex. "C," P. R. 9.)

Alleges that the total amount of payments made on said judgment aggregate the amount of the face of the judgment with interest from the 26th day of January, 1891, up to March 21, 1893, the time of the passage of the act of the legislature.

Alleges that the act of the legislature of March 21, 1893, forbidding the payment of inter-

est on judgments already rendered in the United States court which judgments were for interest at the rate of six per cent per annum is unconstitutional and void, and deprives the plaintiff of its property without due process of law, contrary to Article 2, Section 8, Sec. 17, and Sec. 21 of the Constitution of the State of Arkansas, and deprives the plaintiff of the interest on said judgment contrary to Art. 19, Sec. 13 of the Constitution of the State of Arkansas, that it impairs the obligation of a contract contrary to Section 10, Article 1 of the Constitution of the United States, and deprives the plaintiff of its property without due process of law contrary to the 14 (V) amendment of the Constitution of the United States.

Alleges that the amount paid by said county has not at any time amounted to as much as the interest then due upon said judgment; that the county judge, sheriff and collector and the county treasurer and each and every one refuses to make any further appropriations or payments upon said judgments insisting and contending that said act is valid and that said judgment has been fully paid off and satisfied.

Alleges that there is money in the hands of Claude Thompson, sheriff and collector, the amount of which is unknown to the plaintiff, which should be applied upon said judgment. That there

is money in the hands of the treasurer of said county, the amount of which is to the plaintiff unknown, which should be applied to the satisfaction of said judgment, and that said officers refuse to apply any part of said sums toward the payment of the judgment.

Prays for a writ of mandamus against the sheriff and collector that the sheriff be required to show to the court the amount of moneys in his hands; that the treasurer be required to report to this court what sums of money he has in his hands or possession belonging to said Greenwood District of said county, which should be appropriated towards the payment of said judgment; that upon the answer and report of said defendant the court make an order for the payment of said sums towards the satisfaction of said judgment; that a writ of mandamus issue against them, and for other relief. (P. Rec. pp. 3-6.)

Exhibit "A"—Copy of Original Judgment.

"It is considered by the court that the plaintiff, the Missouri and Arkansas Lumber and Mining Company, do have and recover of and from the defendant Sebastian County, Greenwood District, the sum of thirteen thousand seven hundred and three & 29/100 ($13,703.29) dollars, with interest at the rate of six per cent per annum from this date until paid together with all its costs

in and about this cause laid out and expended" (with certain credits made from time to time.) (P. Rec. pp. 6-7.)

Exhibit "B."

Copy of record of revivor on June 9, 1900, reciting certain payments and the date thereof:

"It is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid and satisfied as hereinbefore stated, be and the same is hereby revived." (P. Rec. p. 8.)

Exhibit "C."

Copy of record of revivor January 18, 1910, reciting certain payments:

"And it appearing that said judgment is wholly unsatisfied with the exception of said payments, which judgment appears on the common law record book No. 1, of this court (pp. 461 and 462), and which judgment of revivor appears on the common law record of this court at Book 5, page No. 414.

And it appearing that the defendant has been duly and legally served with process, and no cause being shown to the contrary, it is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid as hereinbefore stated, be and the same is hereby revived and renewed. And it is further considered, ordered and adjudged that the plaintiff have and recover all its costs in this behalf laid out and expended." (P. Rec. pp. 9-10.)

A demurrer was filed in said petition because it did not state facts sufficient to entitle the plaintiff to relief prayed. (P. Rec. p. 10.)

Motion to require the plaintiff to enter satisfaction upon the judgment. (P. Rec. p. 10.)

ANSWER TO MOTION TO SATISFY JUDGMENT.

"I.

The Act of the Legislature of March 21, 1893, on which plaintiff in said motion relies, is void as it deprives the defendant of its property without due process of law, contrary to Article II, Section 8, of the Constitution of the State of Arkansas.

II.

The said act is discriminatory and deprives this defendant of its property, not allowing six per cent per annum interest, contrary to Article XIX, Section 13, of the Constitution of the State of Arkansas.

III.

It impairs the obligation of contracts evidenced by judgment, contrary to Article II, Section 17, of the Constitution of the State of Arkansas.

IV.

It impairs the obligations of contracts, contrary to Article I, Section 10, of the Constitution of the United States.

V.

It deprives this defendant of its property without due process of law, contrary to the Fourteenth (V) amendment of the Constitution of the United States.

VI.

The liability of the plaintiff in said motion to pay to this defendant six per cent per annum interest from the date of the judgment to the date of its final payment is *res judicata,* having been adjudicated in the original judgment in this cause, and also in the judgment reviving same on June 9, 1900, and January 18, 1910.

Wherefore, this defendant prays that said motion be denied." (P. Rec. pp. 11-12.)

Demurrer to complaint overruled. (P. Rec. p. 12.)

ANSWER.

Admits the entry of the judgment in the language of the complaint, and of Exhibit "A." Admits the judgment of revivor on the 18th day of January, 1910. Denies unconstitutionality of the act of the legislature under the Constitution of the State of Arkansas, or the Constitution of the United States. Admits that the county, judge, sheriff and collector and the county treasurer, each and every one refused to make any further

appropriations or payments upon said judgment insisting and contending that said act is valid and that said judgment has been fully paid off and satisfied.

Denies that there is money in the hands of the sheriff and collector which should be applied to the payment of the judgment.

Alleges that the judgment was based upon county warrants which were non-interest bearing evidences of indebtedness.

And one count of the original petition on which the judgment was entered is made Exhibit "A." (P. Rec. p. 17.)

Alleges that there was no joinder of issue upon the question of interest. Copy of the answer being made Exhibit "B." (P. Rec. p. 18.)

Alleges that the instruction of the court shows that the suit was based upon county warrants and that there was no issue of interest involved as shown by the instruction of the court.

Alleging the court instruction:

"If you find that the scrip sued upon was issued by the Greenwood District of this county, you will find a verdict for the aggregate amount of such scrip so issued without interest."

Which instruction being made Exhibit "C." (P. Rec. p. 19.)

Alleges that if the judgment was recovered by plaintiff in this court for the amount heretofore set out, with interest at the rate of six per cent, from the rendition of the judgment up to March 21, 1893, that the judgment has been fully paid because the payment of interest after the 21st day of March, 1893, was prohibited by legislative act, that "no judgment rendered or to be rendered against any county in the state on county warrants, or any other evidences of indebtedness, shall bear any interest after the passage of this act." (P. Rec. pp. 13-16.)

Exhibit "A."

Copy of one count on which the original judgment was based, that for a valuable consideration had and received for and on behalf of the Greenwood District of said County of Sebastian, drew a warrant upon the said treasurer of the County of Sebastian, said warrant being in the following words and figures, to-wit:

"State of Arkansas:

No. 1439 $7.65

The Treasurer of the County of Sebastian, Greenwood District:

October Term A. D. 1899. Law.

Nov. 7, 1889.

Pay to A. A. McDonald or bearer Seven

65/100 Dollars, out of any money in the Treasury appropriated for ordinary purposes.

Given at Greenwood, Arkansas, this 7th day of November, 1889.

Docket No. 637.

3-990

By C. H. Howe, Deputy,
Jesse A. Bell, Co. Clerk."

Alleging transfer to plaintiff, ownership by plaintiff, presentation to the treasurer of county, demand of payment, refusal of payment, that there is due and unpaid the sum of $7.65.

Wherefore plaintiff demands judgment against the said defendant for the sum of seven dollars and sixty-five cents, with interest from the date of the commencement of this action, and other proper relief.

There were 287 counts in the complaint, all based upon county warrants for various amounts, aggregating the sum of $13,706.34; the prayer to the complaint being as follows:

"Wherefore the plaintiff prays judgment against the said defendant in the Greenwood District of Sebastian County on the above and foregoing several and separate causes of action set forth and mentioned in plaintiff's complaint for the said sums of money therein set forth, amounting in all to the aggregate sum of $13,706.34, together with interest thereon from the date of the

commencement of this suit, and all of its costs in and about this cause laid out and expended, and for further and other proper relief." (P. Rec. pp. 17-18.)

Exhibit "B."

Answer to said original cause, denies that the plaintiff is a corporation under the laws of Illinois, or a citizen thereof. Alleges plaintiff is a partnership under the laws of Arkansas. Denies the right to sue in this court or to own or to have the warrants sued on, denies that said warrants set out in the complaint are warrants of the defendant and denies that the defendant is indebted to the plaintiff in any sum whatever. (P. Rec. pp. 18-19.)

Exhibit "C."

Instruction of the Judge: Instructs the jury that the plaintiff had sued upon 287 pieces of scrip issued by the Greenwood District of said county, that defendant denies the incorporation of plaintiff; denies citizenship in the State of Illinois; denies right to sue; denies the right to own or to have the warrants sued on; denies that defendant is indebted to plaintiff in any sum. Denies that the certificate of incorporation issued by the secretary of state shows that the plaintiff is a

corporation under the laws of Illinois; is a citizen of that state and has a right to sue; that the warrants sued on are warrants of the Greenwood District while they do not possess negotiable character they have element of negotiable paper; that they pass from hand to hand by delivery, being made payable to bearer, that plaintiff would have the right to become the owner for valuable consideration, and would have a right to bring suit in the federal court against the county. That the defendant claimed that the sueable character of the county is taken away by the act of legislature. That as long as the legislature of the state permits a county to contract a mutual obligation as evidences of indebtedness either directly to citizens of other states, or which may pass to them by purchase, such legislature cannot prevent such citizens from bringing suit in a federal court in the state or the county by a law that provides that counties cannot be sued, for the laws of the state permit a county to create on behalf of the citizens of other states a property right as against the county, and this gives the right to such citizens to sue the county in the federal court, and such right is one that is beyond the control of the legislative action of the state and can be regulated alone by the constitution and laws of the United States.

"If you should find that the scrip sued upon was issued by the Greenwood District of the county, you will find a verdict for the aggregate amount of such scrip so issued without interest." (P. Rec. pp. 19-20.)

Motion to strike out paragraph of defendant's answer regarding instruction of the court in the trial of the cause which refers to Exhibit "C" and also to strike out Exhibit "C." (P. Rec. p. 21.)

DEMURRER TO ANSWER.

"First. That the facts set forth in the answer do not constitute a defense against the cause of action set forth in the complaint.

Second. The act of the legislature of March 21, 1893, on which the defendants rely, is void, as it deprives the plaintiff of its property without due process of law, contrary to Article II, Section 8, of the Constitution of the State of Arkansas.

Third. Said act is discriminatory and deprives these defendants of their property, not allowing 6 per cent per annum interest, contrary to Article XIX, Section 13, of the Constitution of the State of Arkansas.

Fourth. It impairs the obligation of contracts evidenced by judgment, contrary to Article II, Section 17, of the Constitution of the State of Arkansas.

Fifth. It impairs the obligation of contracts, contrary to Article I, Section 10, of the Constitution of the United States.

Sixth. It deprives this plaintiff of its property without due process of law, contrary to the fourteenth (V) amendment of the Constitution of the United States.

Seventh. The liability of the defendant county to pay to the plaintiff 6 per cent per annum interest from the date of the judgment to the date of its final payment is *res judicata,* having been adjudicated in the original judgment in this cause, and also in the judgments reviving same on June 9, 1900, and January 18, 1910.

Eighth. The defendants are estopped by the judgments in this cause in which it was adjudicated that the sum should bear interest from date until paid.

Wherefore, plaintiffs prays judgment." (P. Rec. p. 21.)

JUDGMENT.

Demurrer of defendants to the petition of the plaintiff overruled, and demurrer of the plaintiff to answer of the defendant overruled, to which defendant excepted.

Finding of the court that the payments on the judgment amount to the face of the judgment and interest at the rate of six per cent per annum until and including March 21, 1893, and that

subsequent to that time judgment does not bear interest.

Denial of the petition for mandamus and order that the plaintiff make entry of the satisfaction of the judgment. Plaintiff objected and excepted; prayer for writ of error which is granted and assignment of errors filed. (Printed Rec. pp. 22-23.)

BILL OF EXCEPTIONS.

Petition for mandamus and motion to require plaintiff to satisfy the judgment of record submitted to the court. Original judgment of the 26th of January, 1891, read in evidence, record reviving judgment on June 9th, 1906, read in evidence, record of revivor of judgment on the 18th day of January, 1910, read in evidence, and it was agreed in open court that the payments recited in said record entries had been made upon the judgment as therein stated, and that additional payments had since been made equal to but not exceeding in amount the original judgment and interest thereon at the rate of six per cent per annum from the date of the the entry of said original judgment up to and including the 21st day of March, 1893.

It was agreed that application had been made to the defendants for payments upon said judg-

ment but that each of the defendants had refused to make any further payments for the reason that they insisted that the Act of the Legislature on March 21st, 1893, was valid, and that said judgment had been fully paid off and should be satisfied.

Defendant offered in evidence the original complaint, (heretofore abstracted) and it was agreed in open court that numerous counts of like nature were contained in the complaint, but need not be copied. (Printed Rec. pp. 24-25.)

Answer in original cause read (heretofore abstracted.) (Printed Rec. pp. 26-27.)

Instruction of court read in evidence over objection of defendant (heretofore abstracted.) (Printed Rec. pp. 27-28.)

To the introduction and consideration of the instruction of the court the plaintiff excepted. (Printed Rec. p. 28.)

Answer of the Greenwood District of Sebastian County, to the petition for revivor June, 1900, read and considered over the objection of plaintiff.

Admits rendition of the judgment; admits various payments, including payment made on 23d of July, 1897; denies that it draws interest at the rate of six per cent or any other rate since

the 21st day of March, 1893, alleges the passage of the Act of the Legislature on that date; alleges that the judgment is based on county warrants, issued since the adoption of the Constitution of Arkansas in 1874, which provides, "Neither the state nor any city, county or town, or other municipality in this state shall ever loan its credit for any purpose whatever, nor shall any county, city or town or municipality ever issue any interest bearing evidence of indebtedness. Except such bonds as may be authorized by law to provide for and secure the payment of the present existing indebtedness, and the state shall never issue any interest bearing treasury warrants or scrip." Alleges that none of the county warrants which were the basis of the judgment were issued in payment of an indebtedness existing at or prior to the date of the adoption of the constitution.

"Wherefore defendant insists that the plaintiff is not entitled to have said judgment revived as bearing interest at any rate since the 21st of March, 1893, or to bear interest at any rate from henceforth." (Printed Rec. pp. 28-29.)

To the court's receiving and considering said answer the plaintiff objected and excepted. (Printed Rec. p. 30.)

DECLARATION OF LAW ASKED BY PLAINTIFF.

"The plaintiff asked the court to declare the law to be that the defendants, by the adjudications of the court, were estopped from claiming that the judgment should not bear interest from the time of the rendition of the said judgment until paid, which the court declined to do, to which the plaintiff excepted."

The above was all of the evidence in said cause. (Printed Rec. p. 30.)

ASSIGNMENT OF ERRORS.

I.

The United States District Court erred in overruling the demurrer of the plaintiff to the answer of the defendants to the petition of the plaintiff for a writ of mandamus.

II.

Said court erred in holding that the act of the legislature of March 21, 1893, was valid and that said judgment ceased to bear interest at the rate of six per cent per annum after the 21st day of March, 1893, when it was expressly stated in said judgment when rendered prior to said act, that it should bear interest from the date of the judgment until paid, at the rate of six per cent, said act being unconstitutional and void as to said judgment, and depriving the plaintiff of its proper without due process of law, contrary to Article 2, Sections 8 and 21, of the Constitution of the State of Arkansas, and depriving the plaintiff of its interest in said judgment contrary to Article 19, Section 13, of the Constitution of said state.

III.

The rulings of said court in holding said judgment to be fully paid by the payment of the interest up to March 21, 1893, and not thereafter, impaired the obligation of the contract, contrary to Section 10, Article 1 of the Constitution of the United States, and deprived the plaintiff of its property without due process of law, contrary to the fifth and fourteenth amendments to the Constitution of the United States.

IV.

The court erred in holding that the defendants were not estopped from alleging or claiming that said judgment bore interest, from date until paid at the rate of six per cent when said judgment recited upon its face when rendered, that it should bear interest from date until paid at the rate of six per cent per annum, and was revived from time to time.

V.

The court erred in requiring the plaintiff to satisfy said judgment, the same not having been paid, and in dismissing the petition for mandamus, and in rendering judgment against plaintiff for costs. (Printed Rec. pp. 31-32.)

PAYMENTS.

Payments were made on the judgment after it was rendered, as follows:

August 7th, 1896	$ 576.00
May 29th, 1897	1176.00
July 23d, 1897	849.96
July 9th, 1903	2000.00
April 28th, 1904	1000.00
July 19th, 1904	1000.00
March 6th, 1905	500.00
September 19th, 1906	500.00
July 5th, 1907	500.00
April 6th, 1909	1000.00
April 13th, 1909	1000.00
July 10th, 1914	1000.00
August 25th, 1914	1000.00

(Printed Rec. pp. 4-5.)

It was stipulated that subsequently a payment sufficient to cover the principal and interest thereon up to March 23d, 1893, was made.

AUTHORITIES

First, second, third and fifth assignment of errors.

The original judgment for interest was right.

Nevada County v. Hicks, 38 Ark. 557 State *ex rel*;

Nevada County v. Hicks, 48 Ark. 515;

Northern Pacific v. Wall, 241 U. S. 87-91;

Hubert v. New Orleans, 215 U. S. 170;

Walker v. Whitehead, 16 Wall 314;

City of Fort Madison v. Fort Madison Water Company, 134 Fed. 214-216;

Byrd v. State, 15 Ark. 175-179;

Texas and St. Louis Railway Company v. Donnelly, 46 Ark. 87-95;

Stacy v. Raywood Canal and Milling Company, 196 S. W. 568-570;

Whereatt v. Ellis, 68 Wis. 611, 30 N. W. 520;

Barnhart v. Edwards, 128 Cal. 572;

Frazier v. Bigelow Carpet Company, 141 Mass. 126;

De Larama v. De Larama, 241 Wis. 154-159;

Woerz v. Shumacker, 56 N. Y. Sup. 8-11, 37 App. Div. 374;

Roberts and Wife v. Wilcoxson and Rose, 36 Ark. 355;

Pohattan Z. and L. M. Company v. Hill, 98 Ark. 519;

City of San Antonio v. Alamo National Bank, 155 S. W. 620;

American Iron Company v. Seaboard Air Line Company, 233 U. S. 261-268.

(a) Was a debt.

Woodruff v. State, 3 Ark. 285-301-304;

Fletcher v. Peck, 6 Cranch 87;

Hughes v. Kelly, 95 Ark. 327;

Humphreys v. Gerard, 77 Atl. 65;

Hicks v. Cleveland, 106 Fed. 459.

(b) A contract.

Memphis v. United States, 97 U. S. 293-296-298;

Seibert v. Lewis, 122 U. S. 284-295;

Deposit Bank v. Frankfort, 191 U. S. 499-514;

Village of Holland v. Holland, 99 Ill. App. 251-25-3;

Gilman v. Tucker, 128 N. Y. 190-203-4.

(c) An obligation.

Gustavus v. Dahlmer, 163 N. Y. S. 132;

Long v. Walker, 105 N. Car. 90-98;

McCracken v. Hayward, 2d How. 228;

Edwards v. Kearzey, 96 U. S. 595-600;

McCullough v. Virginia, 172 U. S. 102-123-125;

Louisiana v. New Orleans, 102 U. S. 203-206;

Nelson v. St. Martin Parish, 111 U. S. 716;

Ex parte Folsom, et al., 131 Fed. 496-503;

Livingston v. Livingston, 173 N. Y. 377, 77 N. Y. S. 476;

Curran v. State of Arkansas, 15 How. 304-319;

Memphis v. United States, 97 U. S. 293;

Mcgahey v. Virginia, 135 U. S. 662-693;

Hubert v. New Orleans, 215 U. S. 170;

Hughes v. Kelly, 95 Ark. 327;

Village of New Holland v. Holland, 99 Ill. App. Court, 251-253;

Byrd et al. v. Brown, 5 Ark. 709;

Briscoe et al. v. Sandefur et al., 14 Ark. 568;

Garland County v. Hot Springs County, 68 Ark. 83;

Cholar v. Temple, 39 Ark. 238;

Lincoln County v. Simmons, 39 Ark. 485;

Arkansas Southern Railway v. German National Bank, 85 Ark. 136;

Kansas City, Fort Scott and Memphis Railway v. Morgan, 76 Fed. 428;

Burns v. Woolsey, 15 Wash. 134 (45 p. 894);

Hicks v. Cleveland, 106 Fed. 459;

State Trust Company v. Kansas City, Pittsburgh and Gulf Railway, 115 Fed. 367;

Padgett v. Post, 106 Fed. 600;

Gordon v. Ware Bank, 132 Fed. 444;

United States v. New Orleans, 96 U. S. 381-397;

Board of Commissioners v. Workman, 103 N. E. 99;

Merchants' Bank v. Ballou, 98 Va. 112-117.

(d) The interest adjudged was an obligation.

Constitution Art. 19, Sec. 13;

Nevada County v. Hicks, 50 Ark. 416;

Robertson and Wife v. Wilcoxson and Rose, 36 Ark. 355;

Railway v. Donnelley, 46 Ark 87;

Jersey City v. O'Callaghan, 41 N. J. L. 352;

Scherer and Company v. Everest, 168 Fed. 822-831-2;

Citizens' Savings Bank v. City of Newburyport, 169 Fed. 766;

First National Bank of Shenandoah v. Liewer, 187 Fed. 16;

Guernsey v. Imperial Bank of Canada, 188 Fed. 300;

Township of Pine Grove v. Talcott, 19 Wallace, 666;

United States v. Fidelity Surety Company, 236 U. S. 512-530;

De Larama v. De Larama, 241 U. S. 154-159.

(e) The right had vested.

Woodruff v. State, 3 Ark. 285-298-299-301-303;

Byrd et al. v. Brown, 5 Ark. 709-714;

Briscoe et al. v. Sandefur, Admr. et al., 14 Ark. 568;

Lawson et al. v. Jordan et al., 19 Ark. 297;

Cholar v. Temple, 39 Ark. 238;

Shyrock Trustee Etc. v. Cannon, 39 Ark. 434;

Fletcher v. Peck, 6 Cranch. 87;

Gilman v. Decker, 28 N. E. Rep. 1040-3-4 (N. Y.);

State Trust Company v. Kansas City, Pittsburgh and Gulf Railway, 115 Fed. 367;

Krauss v. Krauss, 127 N. Y. 1;

Allers Appeal, 67 P. St. 341;

Lewis v. Lewis, 7 How. 776-784;

Butz v. City of Muscatine, 8 Wallace 575;

Board of Commissioners v. Clark County, 187 Fed. 412;

Memphis v. United States, 97 U. S. 293-296-298;

Seibert v. Lewis, 122 U. S. 284-291;

McCullough v. Virginia, 172 U. S. 102-123-125;

Deposit Bank v. Frankfort, 191 U. S. 499;

Humphrey v. Gerard, 77 Atl. 65;

Livingston v. Livingston, 173 N. Y. 377;

Board of Commissioners v. Woodbury, 187 Fed. 412.

(f) Was property.

German Savings Bank v. Suspension Bridge, 159 N. Y. 362-8-9;

Gilman v. Tucker, 128 N. Y. 190-203-4;

Pryor v. Downey, 50 Cal. 388.

The judgment was conclusive, and the right to interest was *res judicata.*

Peay, Receiver v. Duncan, 20 Ark. 85;

Lincoln County v. Simmons, 39 Ark. 485;

Glass v. Blackwell, 48 Ark. 50-56;

Ballard v. Hunter, 74 Ark. 174-181;

Liddell v. Bodenheimer, 78 Ark. 364;

Grignous, Lessee, v. Astor, 2 How. 319-341;

Garland County v. Hot Springs County, 68 Ark. 83-84-91;

Boynton v. Chicago Mill and Lumber Company, 84 Ark. 203-213;

Jefferson County v. Philpot, 66 Ark. 243-6;

Ex parte Flippin, 94 U. S. 348-353;

Wolf v. New Orleans, 103 U. S. 358-360;

Forsythe v. Hammond, 166 U. S. 506-517;

Chaloner v. Sherman, 242 U. S. 455;

City of San Antonio v. Alamo National Bank, 155 S. W. 620;

Greenwood v. Butler, 52 Kan. 424-8;

Cholar et al. v. Temple et al., 39 Ark. 238;

Stewart v. Wood, 86 Ark. 504;

St. L. and N. A. Railway v. Bratton, 93 Ark. 234-8;

Lewis v. St. Louis and Iron Mountain Railway, 107 Ark. 41-46;

Hicks v. Cleveland, 106 Fed. 459;

Manhattan Trust Company v. Trust Company of North America, 107 Fed. 328;

Fitch v. Stanton Township, 190 Fed. 310-314;

Aetna Insurance Company v. Board of Commissioners, 117 Fed. 82;

City of Madison v. Harsha, 134 Fed. 214;

Straus v. American Publishing Association, 201 Fed. 306;

Voorhees v. Bank of United States. 10 Pet. 449-472-3-7;

Deposit Bank v. Frankfort, 191 U. S. 499-514;

Burns v. Woolery, 15 Wash. 134, 45 P894;

Landa v. Obert, 25 S. W. 342.

The judgments of revivor were also conclusive and *res judicata.*

Ward v. Sturdivant, 96 Ark. 434-439;

Mallory v. Patterson, 161 S. W. Rep. 306;

McDonald v. Thomas County, 131 N. W. Rep. 1021;

Foster v. Crawford, 80 Fed. 991.

Impairing the remedy impaired the right.

Robards v. Brown, 40 Ark. 423-427;

Ex parte Christy, 3 How. 308-328;

United States v. Judges of Scotland County, 32 Fed. 714-715;

Walker v. Whitehead, 16 Wallace 314;

Edwards v. Kearzey, 96 U. S. 595-600;

City of Fort Smith, Madison et al. v. Fort Madison Water Company, 134 Fed. 214-216;

City of Cleveland v. United States, 166 Fed. 677;

Louisiana v. New Orleans, 102 U. S. 203-207;

Butz v. City of Muscatine, 8 Wall 575-581;

Memphis v. United States, 97 U. S. 293-298;

Louisiana v. New Orleans, 102 U. S. 203;

Seibert v. Lewis, 122 U. S. 284-294;

Mcgahey v. Virginia, 135 U. S. 663-693.

The judgment and revivor estopped the parties. Fourth assignment.

Garland County v. Hot Springs County, 68 Ark. 83-91-92;

Gordon v. Ware National Bank, 132 Fed. 444-449;

Messinger v. Anderson, 171 Fed. 785-789;

New Orleans v. Citizens' Bank, 167 U. S. 371-395;

Southern Pacific v. United States, 168 U. S. 1-48;

Deposit Bank v. Frankfort, 191 U. S. 499-510;

Last Chance Mining Company v. Tyler Mining Company, 157 U. S. 683-691.

BRIEF AND ARGUMENT.

STATEMENT.

It is not contended that if a judgment had been rendered for interest, without specifying the rate of interest, that the legislature had no power to change the rate. This question has been definitely settled by the decisions of the state court, and of this court. The case of *Morley v. Lake Shore*, 146 U. S. 162, is the leading case in this court and originated from the State of New York. In the case of *Prouty v. Michigan Southern and Northern Indiana Railway Company*. First Hun. 655, decided at the July Term, 1874, based on an order of court to pay certain sums with interest, it was held, that the rate might be changed by statute, there being no rate specified in the order of court. This case was affirmed by the court of appeals in 26 Hun. 564. This case was expressly decided on the case of *O'Brien v. Young*, 95 N. Y. 428, in which case it was expressly stated by the court "A different rule would apply if a *judgment* or statute should require the payment of a *given sum*, with interest, at a *specified rate* (Ib. 433) then interest at the rate specified would form part of the *obligation to be*

discharged." The Morley case follows these cases and the case of *Reed v. Mississippi County,* 69 Ark. 365 follows the Morley case, and is based upon a like judgment, which does not specify the rate of interest. So these decisions do not control in the present case.

I.

There is but one question involved in this case:

When a judgment is rendered in the Federal Court against a county, in which it is adjudged that the plaintiff have and recover of and from the defendant $13,703.29, "With interest at the rate of six per cent per annum from this date until paid" can the legislature of a state thereafter legislate out of the judgment that part which requires the payment of interest and allow the debtor to make payments for more than twenty years, and extinguish the judgment without payment of any interest subsequent to the act? The facts are undisputed. The question was raised by demurrer to defendant's answer, first assignment of errors (Printed Rec. p. 31) and second and third assignment of errors (Ib), and plaintiff was required to satisfy the record on this showing of facts, fifth assignment of errors (Ib.)

It was right for the judgment to bear interest, it was a debt (a), a contract merged in a judg-

ment (b), an obligation (c), the interest being definitely adjudged was a part of the obligation (d), the right to the interest had vested in the plaintiff (e), it was property (f.) And to legislate out of a judgment, interest that had been definitely adjudged to plaintiff, deprived it of its property without due process of law, and impaired the obligation of its contract, contrary to Sections 8 and 21, Article 2 of the Constitution of Arkansas, and contrary to Section 10, Article 1 and Amendments 5 and 15 to the Constitution of the United States.

The original decisions and judgment rendered by Judge Rogers, was attempted to be set aside by introducing the original complaint, and the instructions given by Judge Rogers to the jury, regarding the interest. These were erroneously received and considered by the court, and do not justify the effort to eliminate the rate of interest as adjudged by the court.

The decision of Judge Rogers was right and in accordance with the laws of the state and of the United States, at the time it was rendered. At the time this judgment was rendered the Constitution prohibited the issuance, by any county, of interest bearing evidences of indebtedness. Art. 16, Sec. 1.

The Constitution also, at that time provided, that where no rate of interest was agreed upon, that the rate should be six per cent per annum • • • "When no rate of interest is agreed upon, the rate shall be six per centum per annum." Art. 19, Sec. 13.

Notwithstanding, the county could not issue interest bearing evidences of indebtedness, the courts held, that judgments rendered upon non interest bearing county warrants, should bear interest, under the Constitution and the Law as it then existed.

Nevada County v. Hicks, 50 Ark. 416.

This case originated on a penal bond and interest was adjudged to the claimant on appeal.

Nevada County v. Hicks, 38 Ark. 557, State *ex rel;*

Nevada County v. Hicks, 48 Ark. 515.

And the law, when this scrip was issued and put upon the market, and when the judgment was rendered, entered into and constituted a part of the contract,

Northern Pacific v. Wall, 241 U. S. 87-91;

Hubert v. New Orleans, 215 U. S. 170;

Walker v. Whitehead, 16 Wall 314;

and legislation may not impair.

City of Fort Madison v. Fort Madison Water Company, 134 Fed. 214-216, list of citations.

The instruction of the judge to the jury, not to allow interest on the scrip, does not defeat his authority to render a judgment for interest from that date forward. The prayer of the complaint, which was given in evidence, is as follows: "Wherefore, the plaintiff prays judgment * * * on the above and foregoing several and separate causes of action * * * amounting in all to the aggregate sum of $13,706.34, together with interest thereon from the date of the commencement of this suit and all its costs in and about this cause laid out and expended, and for further and other proper relief," and the right to interest was not challenged at the time by pleading or exceptions to the judgment. (Printed Rec. p. 26.)

In an action upon a penal bond, the recovery by the plaintiff is not limited to the amount of the damages laid in the declaration.

Byrd v. State, Use of Ashley Admr., 15 Ark. 175-179.

Even if no interest is claimed in the complaint, it is proper for the court to render judgment for the interest, when it is based upon an account for money due, when the complaint asks general relief.

Texas and St. Louis Railway Company v. Donnelly, 46 Ark. 87-95;

Stacy v. Raywood Canal and Mining Company, 196 S. W. 568-570.

Judgment may be entered for interest on a claim for unliquidated damages, where the interest is not asked for specifically.

Whereatt v. Ellis, 68 Wis. 611, 30 N. W. 520.

It is proper to allow it in a suit not based on contract.

Barnhart v. Edwards, 128 Cal. 572;

Frazier v. Bigelow Carpet Company, 141 Mass. 126.

The above cases are cited approvingly in the case of *De Larama v. De Larama,* 241 U. S. 154-159. The court in said case also approved the case of *McLemus v. City of Lancaster,* 65 Wis. 240. And the case of *Rollins v. Busch Brewing Company,* 69 Neb. 34, in which it was held on appeal that it was proper to give interest in a personal injury suit, from the date of the rendition of the verdict, in which case it should only bear interest from the date of the entry of the judgment. The above cases were decided on appeal, and not upon a collateral attack of the judgment.

Interest bears the same relation to money that rent does to land, or wages to labor. American courts are inclined to give it with principal, while the English treat it as distinct.

Woerz v. Shumacker, 56 N. Y. Sup. 8-11, 37 App. Div. 374.

Interest accrues from the time the account is due, when no interest is contracted for.

Roberts and Wife v. Wilcoxson and Rose, 36 Ark. 355.

Our court has held that it was proper to adjudge six per cent interest after rendition of judgment on an instrument that expressly states "bearing no interest."

Pohattan Z. and L. M. Company v. Hill, 98 Ark. 519.

Where the charter of the city forbid the payment of interest a judgment against a city properly bore interest, and interest having been adjudged the question was *res judicata.*

City of San Antonio v. Alamo National Bank, 155 S. W. 620.

"If the court could require the payment of the principal it could also enforce the payment of the interest which was but an incident of the

debt." This language is used in a case based on non-interest bearing indebtedness.

American Iron Company v. Seaboard Air Line, 233 U. S. 261-268.

(a) *The judgment was a debt.*

The original suit was brought upon scrip issued by the county which was commercial paper (*Seibert v. Lewis,* 122 U. S. 284) and evidence of the indebtedness of the county. It was based upon contracts made by the county, and contracts of this character made with the state, are obligations which cannot be impaired by legislation.

"If a party contracts to pay a certain sum on a certain day, it can make no difference whether the money is to be paid to an individual, to a company composed of individuals or to the state itself * * * That contracts cannot be applied to a state when acting in its corporate capacity is a sophism which we are by no means prepared to admit. It is an everyday occurrence, and often necessary to carry out the objects of the legislature. It contracts for its public printing, its buildings and the many objects indispensable to the public safety and due administration of justice. Rights once vested, privileges once granted or sanctioned by the law of the state, if within the constitutional limits, may it is true, be forfeited but cannot be arbitrary divested, or withdrawn by a future legislature and they will be protected in the possession of one and in the enjoyment of the other. The principle that a state

cannot contract with citizens, and that the contract is not binding upon both, was, we think not long since successfully exploded.

In our own state it is not of frequent occurrence, but recognized by the constitution, and regulated by statute, (Rev. Stat. 742) in authorizing suits to be brought against the state, directing the mode of procedure and making the judgment binding upon the state. Sovereignty alone is in the people, and they, by a written constitution, have limited the legislative powers, by prohibiting them from passing any law, in whatever form, impairing the obligation of a contract * * * Any deviation from its terms, by postponing or accelerating the period of its performance, which it prescribes; imposing conditions not expressed in the contract, or dispensing with the performance of those which are a part of the contract, however minute or apparently immaterial in their effect upon it, impairs its obligations. * * * A law provides for the future only, and can have no retrospective operation, or impair the obligation of contracts. The question then recurs as to how far the case of plaintiffs in error is brought within the prohibition as contained in our constitution—that no law impairing the obligation of contract shall be passed. * * * If the legislature could on the 5th day of March, 1838, enact that the plaintiffs in error should pay twenty-five per centum per annum, from the time the debt of Woodruff to the state became due, from a prior antecedent (October 26, 1837) notwithstanding the general statute that all recoveries, contracts and legal obligations, should bear but six per centum per annum, why could not the same rule be extended, with equally as much justice, to all her debtors no matter under what cir-

cumstances the debt may have been contracted!

Suppose the legislature, had, by law, on the 5th of March, 1838, declared that each and every individual who was indebted to the state, to the Real Estate Bank, or to the Bank of the State, on the 26th day of October, 1837, should pay interest or damages at the rate of twenty-five per centum per annum, until paid, notwithstanding the law, at the time the debts were contracted or became due gave but six per cent, we apprehend, there would have been a general concurrence on the part of the community, that the exercise of such a power was unwarrantable, and contrary to every principle of law and justice. Yet the principle is the same. * * * The fundamental principles of government require that where one of its citizens enters into an obligation to perform any stipulated duty, the penalties for a failure on the one hand, or an abridgment of his privileges on the other, should neither be increased nor diminished. Every reason of justice and policy unites to prove that, at no future period, should a legislative body be authorized to attach punishment for a failure which did not exist when the act was done, suffered or committed, or enact any law changing, or in any way altering the terms of the contract such a doctrine would be unjust to parties, ruinous in its consequence and contrary to every principle of sound legislation."

The court in this case proceeded to hold that the interest on an official bond could not be increased beyond the rate fixed by the state, at the time of the execution of the bond and held that the bond was a contract with the state.

Woodruff v. State, 3 Ark. 285-301-304.

"Contracts of the state are equally as involable as those between private individuals."

Fletcher v. Peck, 6 Cranch 87.

In a suit upon a statutory liability against the president of a bank, our court, quoted from Mr. Blackstone, as follows: "Whatever, therefore, the laws order anyone to pay that becomes instantly a debt, which he hath beforehand contracted to discharge." And from Mr. Bishop, as follows: "The law by placing its command in whatever form upon one to do a thing for the benefit of another, or the state, creates the promise from the former to the latter to do it." And the court proceeds to hold that the liability is not in the nature of a penalty but controlled by the laws of contract.

Hughes v. Kelly, 95 Ark. 327, see also
Humphreys v. Gerard, 77 Atl. 65;
Hicks v. Cleveland, 106 Fed. 459.

(b) *The judgment for interest was a contract.*

The suit being based on a contract the contract was merged in the judgment and the judgment became the evidence of a contract. In this case the relator recovered his judgment

against the city on the 16th day of March, 1875. Into that judgment his contract was merged and it no longer had any legal existence if as asserted by Blackstone, the judgment was itself a contract, the remedies for its enforcement existing at the time when it was recovered, could not be taken away either by direct legislation or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave the relator, whatever they were, are equally secure against legislative invasion."

Memphis v. United States, 97 U. S. 293-296-298;
Seibert v. Lewis, 122 U. S. 284-295;
Deposit Bank v. Frankfort, 191 U. S. 499-514;
Village of Holland v. Holland, 99 Ill. App. 251-253;
Gustavus v. Dahlmer, 163 N. Y. S. 132.

(c) *The judgment for interest is an obligation.*

Interest in a judgment which is an obligation of record to pay the sum adjudged is given for the delay in performing the obligation.

Gustavus v. Dahlmer, 163 N. Y. 132.

The obligation of a contract is the law which binds the parties to perform it, and the largest

or least interference is prohibited, if the value is diminished.

Long v. Walker, 105 N. Car. 90-98;

McCracken v. Hayward, 2d How. 228;

Curran v. State of Arkansas, 15th How. 304;

Edwards v. Kearzey, 96 U. S. 595-600;

McCullough v. Virginia, 172 U. S. 102-123-125;

Louisiana v. New Orleans, 102 U. S. 203-206;

Nelson v. St. Martin Parish, 111 U. S. 716;

Ex parte Folsom, et al., 131 Fed. 496-503.

It was held by the Court of Appeals of New York in which the identical language of our statute, was used with reference to granting alimony "at any time after judgment *whether before* or *hereafter* rendered to annul, vary or modify such a direction" (italics court's) that the act was void as to judgments already rendered, that the judgment was an obligation of the highest order known to the law, and that the fruits of the judgment became rights of property.

Livingston v. Livingston, 173 N. Y. 377, 77 N. Y. S. 476.

The rights conferred by a judgment create an obligation that cannot be impaired.

Curran v. State of Arkansas, 15 Howard, 304-319.

The original contract is merged in the judgment and the terms of the judgment were an obligation that could not be impaired or its value diminished.

Edwards v. Kearzey, 96 U. S. 595-600;
Memphis v. United States, 97 U. S. 293;
McGahey v. Virginia, 135 U. S. 662-693.

The judgment is an obligation protected by the constitution and any legislation which impairs its efficiency or postpones or retards the enforcement is in violation of the constitution.

Louisiana v. New Orleans, 102 U. S. 203-206;
Hubert v. New Orleans, 215 U. S. 170.

The judgment is a debt according to the decisions of the State of Arkansas.

Hughes v. Kelley, 95 Ark. 327.

When a contract is merged in a judgment it is beyond legislative control.

Village of New Holland v. Holland, 99 Ill. App. Court, 251-253.

The law enters into a contract of a city for

its own expenses and a judgment thereon cannot be impaired or its value lessened by subsequent legislation, although it was held by the state court not to be a contract.

Hubert v. New Orleans, 215 U. S. 170.

(d) *The interest being definitely adjudged was a part of the obligation.*

The original action was based upon city scrip made payable to bearer. It was commercial paper and under the constitution of the state and ruling of the state court at the time the judgment was rendered, the judgment would bear interest at the rate of six per cent per annum until paid.

Constitution Art. 19 Sec. 13;

Nevada County v. Hicks, 50 Ark. 416;

Robertson and Wife v. Wilcoxson and Rose, 36 Ark. 355;

Railway v. Donnelly, 46 Ark. 87;

Jersey City v. O'Callaghan, 41 N. J. L. 352.

Had it not been so adjudged the Federal Court would not have been required to follow the state decisions regarding commercial paper and it would have been proper to have allowed interest in the judgment.

Scherer and Company v. Everest, 168 Fed. 822-831-2;

Citizens' Savings Bank v. City of Newburyport, 169 Fed. 766;

First National Bank of Shenandoah v. Liewer 187 Fed. 16;

Guernsey v. Imperial Bank of Canada, 188 Fed. 300;

Township of Pine Grove v. Talcott, 19 Wallace, 666;

United States v. Fidelity Surety Company, 236 U. S. 512-530;

De Larama v. De Larama, 241 U. S. 154-159.

(e) *The right to the interest had vested in the plaintiff.*

The right to recover interest upon the adjudication of the court was a vested right, and could not be affected by subsequent legislation. The judgment having determined the rate of interest and that it should continue to bear interest at that rate until paid, it could not be affected by subsequent legislation.

Woodruff v. State, 3 Ark. 285-298-299-301-303;

Byrd et al. v. Brown, 5 Ark. 709-714;

Briscoe et al. v. Sandefur, Admr. et al., 14 Ark. 568;

Lawson et al. v. Jordan et al., 19 Ark. 297;

Cholar v. Temple, 39 Ark. 238;

Shyrock Trustee Etc. v. Cannon, 39 Ark. 434;

Fletcher v. Peck, 6 Cranch 87;

Gilman v. Decker, 28 N. E. Rep. 1040-3-4 (N. Y.);

State Trust Company v. Kansas City, Pittsburgh and Gulf Railway, 115 Fed. 367;

Krauss v. Krauss, 127 N. Y. 1;

Allers Appeal, 67 Pa. St. 341.

"And a legislature can never be presumed to intend to destroy vested rights. Indeed, they have no power to pass such a law."

Lewis v. Lewis, 7 How. 776-784;

Butz v. City of Muscatine, 8 Wallace 575;

Board of Commissioners v. Clark County, 187 Fed. 412.

The judgment being based on the contract, the contract was merged into the judgment. "And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislative invasion."

Memphis v. United States, 97 U. S. 293-296-298.

After the judgment is obtained any subsequent legislation which affects the remedy so

as to lessen the value of the contract, is forbidden by the constitution.

Seibert v. Lewis, 122 U. S. 284-291.

"The obligation of a contract in the constitutional sense, is the means provided by the law, by which it can be enforced—by which the parties can be obliged to perform it. Whatever legislation lessens the efficiency of these means impairs the obligation, if it tend to postpone or retard the enforcement of the contract the obligation of the latter is to that extent weakened.

Ib, 295.

"It is therefore not denied in argument in the present case that Paragraph Two of the Act of March 23d, 1868, under which the municipal obligations of the relator, which had passed into judgment, were issued, constitutes a part of the contract to the benefit of which he is entitled."

Ib, 295.

"It is not within the power of a legislature to take away rights which have been once vested by a judgment. Legislation may act on subsequent proceedings, may abate actions pending, but when those actions have passed into judgment, the power of the legislature to disturb the rights created thereby ceases." * * * "But it is not necessary now to determine that question, inasmuch as the judgment in the trial court was rendered, as we have seen, prior to the repealing act, and the right acquired by the judgment creditor was not and could not constitutionally be taken away."

McCullough v. Virginia, 172 U. S. 102-123-125.

See also *Deposit Bank v. Frankfort*, 191 U. S. 499, as covering the various features of this case. Also

Humphrey v. Gerard, 77 Atl. 65;
Livingston v. Livingston, 173 N. Y. 377;
Board of Commissioners v. Woodbury, 187 Fed. 412.

(f) *The interest having been adjudged to plaintiff it was property.*

A final judgment when rendered is property that is protected by the constitution.

German Savings Bank v. Suspension Bridge, 159 N. Y. 362-8-9;
Gilman v. Tucker, 128 N. Y. 190-203-4;
Pryor v. Downy, 50 Cal. 388.

II.

The judgment was conclusive and the right to interest was res judicata.

The judgment in this case required that interest should be paid at the rate of six per cent per annum from the date of the rendition of the judgment until it should be fully paid. An adjudication of a court determines the rights of the parties, and the rights of the parties are conclusively ascertained and there is no way of modi-

fying a judgment of this character except by appeal.

Rea, Rec. v. Duncan, 20 Ark. 85;
Lincoln County v. Simmons, 39 Ark. 485;
Glass v. Blackwell, 48 Ark. 50-56;
Ballard v. Hunter, 74 Ark. 174-181;
Liddell v. Rodenheimer, 78 Ark. 364;
Grignous, Lessee v. Astor, 2 How. 319-341.

A judgment of the United States Court settles the validity of the bonds and the *rate of interest* and the judgment cannot be attacked collaterally.

Garland County v. Hot Springs, 68 Ark. 83-84-91;
Boynton v. Chicago Mill and Lumber Company, 84 Ark. 203-213.

"A judgment is the final determination of the rights of the parties to the action."

Jefferson County v. Philpot, 66 Ark. 243-6.

"Such demand or claim having passed into judgment cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever."

Ex Parte Flippin, 94 U. S. 348-353.

"The court held that the indebtedness of the city was conclusively established by the judg-

ments recovered against it, and their payment was not restricted to any species of property or revenues, or subject to any conditions. If there were any limitations upon the means by which payment of the bonds was to be, they should have been insisted upon when the suits were pending, and have been continued in the judgments. The fact that no such limitations were there found was conclusive that none existed."

Wolf v. New Orleans, 103 U. S. 358-360.

"The principles controlling the doctrine of *res judicata* have been so often announced and so universally recognized that the citation of authority is scarcely necessary. * * * A decision by a court of competent jurisdiction in respect to an essential fact or question is conclusive between the parties in all subsequent action."

Forsythe v. Hammond, 166 U. S. 506-517;

Chaloner v. Sherman, 242 U. S. 455.

In the case of *Deposit Bank v. Frankfort,* 191 U. S. 499, in which a judgment had been rendered, although subsequently a different ruling was made, the court says:

"In this case we have to deal with the effect of a decree of the Circuit Court of the United States, which is unreversed and affirmed in this court, and in which, between the parties to the present action, it was held that the Hewitt Law was a valid enactment, and constituted a contract between the parties within the protection of the

contract clause of the Constitution of the United States."

Ib, 508.

The court said:

"That it would undermine the foundation of the principle upon which it is based if the court might inquire into and reverse the reasons which led the court to make the judgment. In such case nothing would be set at rest by the decree, but the matter supposed to be finally adjudicated and concerning which the parties had had their day in court, could be reopened and examined, and if the reasons stated were, in the judgment of the court before which the estoppel is pleaded, insufficient, a new judgment could be rendered because of these divergent views, and the whole matter would be at large. In other words nothing would be settled and the judgment unreversed, instead of having the effect of forever settling the rights of the parties, would be but an idle ceremony. We are unable to find reason or authority supporting the proposition, that because a judgment may have been given for wrong reasons or has been subsequently reversed, that it is any the less effective as an estoppel between the parties while in force."

Ib, 510.

The court proceeds to hold that as the former decision held the matter to be based in contract, when subsequent decisions held differently, that the former decision was absolutely binding between the parties.

A judgment against a city on warrants is conclusive as to interest even where the city charter forbids the payment of interest and where the complaint did not contain a prayer for interest.

City of San Antonio v. Alamo National Bank, 155 S. W. 620.

"It hardly seems necessary to cite authorities to support the proposition that a final judgment so entered is not to be changed or set aside by the law making power. Our form of government does not contemplate an appeal from the courts to the legislature, nor does it contemplate, nor authorize, by a sweeping act of the legislature a change in the force and effect of a great class of judgments already entered."

Greenwood v. Butler, 52 Kan. 424-8.

A judgment for interest from date until paid is *res judicata* and is binding on the parties even though it was erroneous. It can not be changed by the court after the term or defeated by subsequent legislation or subsequent decisions.

Cholar et al. v. Temple et al., 39 Ark. 238;

Liddell v. Bodenheimer, 78 Ark. 364;

Stewart v. Wood, 86 Ark. 504;

St. L. and N. A. Railway v. Bratton, 93 Ark. 234-8;

Lewis v. St. L. and I. M. Railway, 107 Ark. 41-46;

Hicks v. Cleveland, 106 Fed. 459;

Manhattan Trust Company v. Trust Company of North America, 107 Fed. 328;

Fitch v. Stanton Township, 190 Fed. 310-314;

Aetna Insurance Company v. Board of Commissioners, 117 Fed. 82;

City of Madison v. Harsha, 134 Fed. 214;

Straus v. American Publishing Association, 201 Fed. 306;

Voorhees v. Bank of United States, 10 Pet. 449-472-3-7;

Deposit Bank v. Frankfort, 191 U. S. 499-514.

The rate of interest had been determined by adjudication and could not be changed by legislation.

Burns v. Woolery, 15 Wash. 134, 45 P. 894;

Landa v. Obert, 25 S. W. 342.

III.

The judgments of revivor were also conclusive.

The original judgment was "It is considered by the court that the plaintiff Missouri and Arkansas Lumber and Mining Company, do have and recover of and from the defendant Sebastian County, Greenwood District, the sum of thirteen

thousand seven hundred three and 29/100 ($13,-703.29) dollars, with interest at the rate of six per cent per annum from this date until paid." (Printed Rec. p. 7, and was entered on the 26th day of January, 1891.)

On June 9th, 1900, the judgment of revivor was "It is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid and satisfied as hereinbefore stated, be and the same is hereby revived." (Printed Rec. p. 8.) On the 18th day of January, 1910, judgment was entered as follows: "And it appearing that the defendant has been duly and legally served with process and no cause being shown to the contrary, it is therefore considered, ordered and adjudged that the said judgment in so far as the same has not been paid, as hereinabove stated, be and the same is hereby revived and renewed." (Printed Rec. p. 10.) The payments recited as having been made did not equal the amount of interest due at that time.

"The judgment of revival is conclusive against all facts and defenses which existed before its rendition." In Second Freeman on Judgments, Paragraph 448, it is said "The effects of a judgment entered upon a *scire facais,* as an adjudication, does not differ from that of other judgments. It cannot be collaterally avoided for mere error or irregularities and until set aside by some

proper proceedings it conclusively establishes the facts necessary to support it as against all persons properly made parties thereto."

Ward v. Sturdivant, 96 Ark. 434-439.

A judgment of revivor is *res adjudicata* as to all matters set up or that might have been set up.

Mallory v. Patterson, 161 S. W. Rep. 306.

A judgment reviving a judgment draws interest from the rendition of the original judgment.

McDonald v. Thomas County, 131 N. W. Rep. 1021.

The judgment was revived *in toto*. The court would have been compelled to so revive it even if he had regarded it as erroneous.

Foster v. Crawford, 80 Fed. 991.

The legislature could not change a judgment or authorize the court to re-adjudicate or revise its judgment.

Byrd, et al. v. Brown, 5 Ark. 709;

Briscoe, et al. v. Sandefur, et al., 14 Ark. 568.

And if rendered for an erroneous amount of interest, it is binding until reversed by a higher court.

Garland County v. Hot Spring County, 68 Ark. 83;

Cholar v. Temple, 39 Ark. 238;

Lincoln v. Simons, 39 Ark. 485.

If the rate of interest is specified it becomes a part of the judgment.

Arkansas Southern Railway v. German National Bank, 85 Ark. 136.

The judgment specifying that it should bear interest from that date until paid, is absolutely conclusive and binding upon the parties.

K. C. Ft. S. & M. Ry. v. Morgan, 76 Fed. 428;

Burns v. Woolery, 15 Wash. 134, (45 p. 894);

Hicks v. Cleveland, 106 Fed. 459;

Padgett v. Post, 106 Fed. 600;

Gordon v. Ware Bank, 132 Fed. 444;

State Trust Co. v. K. C. P. & G. Ry., 115 Fed. 367;

United States v. New Orleans, 98 U. S. 381-397.

A judgment holding a contract with a county invalid, subsequent legislation could not validate the contract, or affect the rights of the parties.

Board of Comm. v. Workman, 103 N. E. 99.

The legislature could not pass a law that would lessen the value of a judgment.

Merchants Bank v. Ballou, 98 Va. 112-117.

IV.

The judgment estopped the parties to the record. Fourth Assignment of Errors.

It having been adjudged in the original case, that the sum should bear interest at the rate of six per cent per annum, until paid, and this judgment having been revived twice, the parties were estopped to controvert the fact of the judgment continuing to bear interest.

"The judgments of the United States Court against Hot Spring County, settled the validity of these bonds and the rate of interest recoverable upon them, and cannot be collaterally attacked, even if erroneous in the amount of interest recovered against Hot Spring County. Garland County is bound by these judgments.

These judgments are *res judicata* and estop both Hot Spring and Garland County."

Garland County v. Hot Spring County, 68 Ark. 83-91-92;

Gordon v. Ware National Bank, 132 Fed. 444-449;

Messinger v. Anderson, 171 Fed. 785-789;

New Orleans v. Citizens Bank, 167 U. S. 371-395;

Southern Pacific v. U. S., 168 U. S. 371-48;

Deposit Bank v. Frankfort, 191 U. S. 499-510.

Withdrawing the answer to the petition to revive did not prevent the judgment rendered from being as effective as if the answer had remained and had been passed upon. The judgment was absolute.

Last Chance Mining Co. v. Tyler Mining Co., 157 U. S. 683-691.

V.

Impairing the remedy impairs the contract.

Bearing interest was an inducement to pay and was part of the remedy.

After this judgment had been rendered a law was enacted which enabled the county to pay the entire judgment by paying less than the accrued interest. The fact that an obligation bore interest was an inducement and a compulsion to pay to prevent the accumulation of interest. It was a part of the remedy to induce payment. A law that deprives one of a remedy substantially as good as that existing, impairs the contract. You cannot, under the guise of changing the remedy, impair an obligation.

Robards v. Brown, 40 Ark. 423-427.

A state law which encumbers the remedy by conditions imposed after the obligation has attached, is null and void.

Ex parte Christy, 3 Howard 308-328;

Curran v. State of Ark., 304-319;

U. S. v. Judges of Scotland County, 32 Fed. 714-715;

Walker v. Whitehead, 16 Wallace 314;

Edwards v. Kearzey, 96 U. S. 595-600.

See also,

City of Ft. Smith, Madison, et al. v. Fort Madison Water Co., 134 Fed. 214-216.

If the value of the judgment is lessened or remedy made less effective, the obligation is impaired.

City of Cleveland v. U. S., 166 Fed. 677.

"He who pays too late pays less."

Louisiana v. New Orleans, 102 U. S. 203-207.

See also,

Butz v. City of Muscatine, 8 Wall 575-581;

Memphis v. U. S., 97 U. S. 293-298;

Louisiana v. New Orleans, 102 U. S. 203;

Seibert v. Lewis, 122 U. S. 284-294;

McGahey v. Virginia, 135 U. S. 663-693.

The language of our court regarding the claim against Nevada County is certainly applicable to the facts of this case. The court said:

"This claim has been in the courts until it has grown into large proportions. By a mistaken zeal and jealousy of the supposed rights of the appellant, her county court had delayed and hin-

dered appellees from collecting their claim for many years, and it would be unconscionable, if it were legal, to confine them to the recovery only of the amount of the original decree, rendered in 1880 —and that to be paid in county warrants—perhaps of depreciated value. But the law does not require nor warrant this, at the hands of this court."

Nevada County v. Hicks, 50 Ark. 416-421.

This case is clearly distinguished from the Morley case as the judgment required that the principal should bear interest at the rate of six per cent per annum until it was paid. And it is clearly distinguished in the case of,

Greenwood v. Butler, 52 Kan. 424-430.

Also,

Watkins v. Glenn, 55 Kan. 417-431-2.

Also,

Landa v. Obert, 25 S. W. 342-345.

See also,

Bettman v. Cowley, 19 Wash. 40 L. R. A. 815.

And it is respectfully submitted that the judgment of the lower court, refusing a writ of mandamus and requiring the plaintiff to satisfy the record, should be reversed.

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